

Development Agreement

Timothy Isaac Sinke and Laura Rose-Marie Sinke

614 Metler Road

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THIS AGREEMENT made this 4th day of October, 2021.

BETWEEN:

**TIMOTHY ISAAC SINKE,
LAURA ROSE-MARIE SINKE**

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 is the registered owner of the lands located in the Town of Pelham described in Schedule "A" and has applied to the Town of Pelham Committee of Adjustment for consent under applications B5/2021P and B6/2021P and has obtained such consent subject to conditions;

AND WHEREAS the Town requires the Developer, before final approval of the consents, to agree to be bound by the terms and conditions of the Development Agreement for which approval is sought;

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

1. Definitions

In this Agreement:

- (a) **Building Permit** means a permit issued by the Chief Building Official of the Town and required pursuant to the provisions of the *Building Code Act*, as amended, or any successor thereto and the Building By-law of the Town and amendments thereto.
- (b) **Chief Building Official** shall mean the Chief Building Official of the Corporation of the Town of Pelham.
- (c) **Clerk** shall mean the Clerk of the Corporation of the Town of Pelham.
- (d) **Committee Of Adjustment** shall mean the Committee of Adjustment of the Town of Pelham in accordance with the provisions of Sections 48 and 49 of The Planning Act.
- (e) **Council** shall mean the Council of the Corporation of the Town of Pelham.
- (f) **Developer** means Timothy Isaac Sinke and Laura Rose-Marie Sinke, its

successors and assigns, and includes its successors in title to the Lands or a Lot described in Schedule "A" attached hereto.

- (g) **Development Plan** means the Lot Grading and Drainage Plan attached hereto as Schedule "B" over the Lands pursuant to the provisions of the Planning Act, R.S.O. 1990, c.P.13, as amended, or any successor thereto.
- (h) **Director of Community Planning & Development** shall mean the Director of Community Planning & Development of the Corporation of the Town of Pelham.
- (i) **Director of Public Works** shall mean the Director of Public Works of the Corporation of the Town of Pelham.
- (j) **Facilities and Works** shall mean and includes those facilities and works which are shown on or referred to in any one or more of the plans, drawings and schedules to this Agreement.
- (k) **Lands** shall mean the lands described in Schedule 'A' attached hereto.
- (l) **Owner** means either Timothy Isaac Sinke and Laura Rose-Marie Sinke or the applicant for a Building Permit for one of the Lots and includes the person on whose behalf an application for a Building Permit is made.
- (m) **Professional Engineer** shall mean a Professional Engineer registered in good standing with the Association of Professional Engineers.
- (n) **Surveyor** shall mean an Ontario Land Surveyor registered in good standing with the Association of Ontario Land Surveyors.

2. Lands Affected

The Lands to be subdivided are those Lands described in Schedule "A" attached hereto and the Development Agreement shall be registered against all of such Lands.

3. General Provisions

- (a) The Owner shall develop and maintain the Lands only in accordance with the terms and conditions contained herein and any other applicable by-law of the Town.
- (b) Unless the context otherwise requires, where the Owner is obligated by this Agreement or the approved plans to make any payments or install, construct, or carry out any services or action, the provisions therefore contained herein shall be deemed to include the words, "at the sole expense of the Owner".
- (c) The Owner shall not perform any construction or installation on the Lands except in accordance with the terms and conditions contained herein and to the reasonable satisfaction of the Town.
- (d) The Owner shall obtain the required Driveway Entrance & Culvert Permit in

accordance with Section 8, prior to any building permit issuance and any construction works taking place within the Town road allowance.

- (e) During construction, the Owner shall ensure all construction related vehicles that are not carrying out the works are parked on the subject lands and are not parked within the municipal road allowance.
- (f) All delivery / construction trucks taking materials from the subject lands included within this Agreement shall be adequately covered and not unreasonably loaded so as to scatter refuse, rubbish, dust or debris on neighbouring properties or public roadways.
- (g) Should deeply buried archaeological remains / resources be found on the property during construction activities, all activities impacting archaeological resources must cease immediately, notify the Archaeology Programs Unit of the Ontario Ministry of Heritage, Sport, Tourism & Culture Industries (416-212-8886) and the Owner's archaeology consultant is required to carry out an archaeological assessment in accordance with the *Ontario Heritage Act* and the *Standards and Guidelines for Consultant Archaeologists*.

In the event that human remains are encountered during construction, all activities must cease immediately and the local Police as well as the Cemeteries Regulation Unit of the Ministry of Government & Consumer Services (416-326-8800) must be contacted. In situations where human remains are associated with archaeological resources, MTCS should also be notified to ensure that the site is not subject to unlicensed alterations which would be in contravention of the *Ontario Heritage Act*.

- (h) The Owner grants to the Town, its servants, agents, and assigns permission to enter upon the Lands for the purpose of inspection of any Facilities and Works referred to in this Agreement and for the purpose of the completion of any Facilities and Works in accordance with this Clause and this Agreement.
- (i) 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.
- (j) The Owner and the Town acknowledge and agree that it is their intent that all terms, conditions and covenants contained herein:
 - i. Shall run with the subject lands on title;
 - ii. Shall be binding upon the Owner, its heirs, executors, administrators, assigns and successors in title, from time to time; and
 - iii. The benefits of said covenants shall ensure to the Town, its successors and assigns in title, of all roads, streets, and public lands forming part of the subject lands.
- (k) 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.

- (l) 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.
- (m) In the event that a Mortgagee(s) exercises any rights as to sale, possession or foreclosure or takes any other steps to enforce its security against the subject lands, then such Mortgagee(s) agrees on behalf of itself, its heirs, executors, administrators, successors and assigns not to deal with the lands as a development or part thereof unless and until a new Agreement in the same form, mutatis mutandis, as this Agreement has been entered into with the Town.
- (n) Any lands required to be conveyed by the Owner in accordance with the provisions hereof shall be in a neat and tidy condition, free of all debris and trash, and the Owner shall complete all services for the lands in accordance with the terms of this Agreement.
- (o) Notwithstanding the provisions of this Agreement, the Owner shall be subject to all of the Town's By-laws and all Provincial and Federal government statutes and / or regulations and amendments thereto affecting the site's development and installation of municipal services.

4. Lot Grading and Drainage

- (a) The Developer shall be responsible for providing, at their expense, a Comprehensive Overall Lot Grading & Drainage Plan for the land described in Schedule "A" attached hereto; said plan must demonstrate that drainage does not negatively affect, nor rely on neighbouring properties, to the satisfaction of the Director of Public Works, or designate. This Plan, attached hereto as Schedule "B", shall be approved by the Director of Public Works and Director of Community Planning & Development prior to the execution of this Agreement.
- (b) The Site Plan and Grading Plan provided at the time of building permit shall not deviate from that approved under this Agreement, to the satisfaction of the Director of Public Works and the Director of Community Planning & Development.

5. Sanitary Sewage System

- (a) A new private sewage system shall be installed for all parcels on the land described in Schedule "A" attached hereto, said system shall meet all requirements of the Ontario Building Code, as well as the implementation of the recommendations of the Hydrogeological Assessment, prepared by Terra Dynamics Consulting Inc. (dated November 11, 2020).
- (b) All lots shall be equipped with sewage systems that provide at least 50% nitrogen reduction of septic effluent Level IV/tertiary treatment.
- (c) Future sewage disposal systems observe the required set-backs from existing water supplies as shown on Figure 4 of the Hydrogeological Assessment,

prepared by Terra Dynamics Consulting Inc. (dated November 11, 2020), unless these water supplies are decommissioned by an Ontario-licensed water well contractor.

- (d) All of the above mentioned requirements shall be completed to the satisfaction of The Regional Municipality of Niagara.

6. Water Supply

- (a) The Owner shall, at its own expense, provide and maintain an internal private water supply necessary to serve the lands. The water shall be supplied by cisterns for each of the proposed lots. Otherwise, the construction of new groundwater supplies with the requirements stated below shall be completed to the satisfaction of The Regional Municipality of Niagara:

- i. A water supply assessment completed in accordance with the Ministry of Environment, Conservation and Parks D-5-5 Guidelines for Private Wells: Water Supply Assessment;
- ii. Well construction within the Pre-Halton or Bedrock aquifers; and
- iii. That its location(s) comply with the Ontario Building Code setbacks.

7. Street Trees

The Owner acknowledges that any removal of street trees shall be replaced with an approved large caliper tree in accordance with the Town's Street Tree Planting List to the satisfaction of the Director of Public Works

8. Driveways / Entrances

The Owner shall obtain approval for a Driveway Entrance and Culvert Permit at its own expense for the construction or modification of all new or existing driveway entrances. The Owner acknowledges that the installation of driveway entrances shall be in accordance with Town standards, and shall be to the satisfaction of the Director of Public Works.

9. Administrative & Consulting Costs

The Owner shall pay the Town's reasonable costs, **\$2,727** (Two-thousand, seven hundred and twenty seven dollars) in connection with this Agreement for preparation, processing, administration and supervision including, but not limited to, all administrative, legal, inspection and consulting expenses.

10. Registration

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

11. Obligation

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

Agreement, or the failure of the Town to force any such person to perform or fully perform any obligation under this Agreement or any negligence of any such person in the performance of the said obligation.

12. Building Permits

- (a) The Developer may construct and the Town shall permit the construction of the buildings and other structures on the Lands in accordance with the Schedules attached hereto to permit the development provided that all such uses shall comply with all building and zoning requirements of the Town.
- (b) The Developer agrees that no Building Permit shall be issued until the building drawings are approved to the satisfaction of the Chief Building Official.
- (c) The Developer agrees that, unless otherwise determined by Council, no Building Permits shall be issued on any parts of the lands until all Primary Services as defined elsewhere in this Agreement are completed and operational to the satisfaction of the Region of Niagara and to the Director of Public Works.
- (d) In addition to paying the building permit fee, the Owner of a lot shall pay the applicable parkland dedication fees and Town & Regional development charges at the time a building permit is issued for the residential dwelling conceptually shown on Schedule 'B' and any future building(s) requiring the payment of such fees, as applicable.
- (e) 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.

13. Cash-In-Lieu of Parkland Dedication

Prior to the issuance of a building permit, the Developer agrees to pay five percent (5%) of the value of the lands to the Town in lieu of lands for parks purposes pursuant to the provisions of Subsection 42(6) of the Planning Act. The Developer shall have the Lots appraised by a qualified appraiser to determine the value of each Lot pursuant to Subsection 42(6) the Planning Act.

14. Default

Upon breach by the Owner of any covenant, term, condition or requirement of this Agreement, or upon the Owner becoming insolvent or making any assignment for the benefit of creditors, the Town, at its option, may declare the Owner to be in default. Notice of such default ("Notice of 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 ("Notice of 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 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 ought to have been made 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;
- 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. 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 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.

15. Rescission of Agreement

- (a) In the event that the Development Agreement is not registered within one (1) year from the date hereof, then the Town may, at its option and on one (1) months' notice in writing to the Developer, declare this Agreement null and void and may Register against the title to the Lands included within the Development Plan a notice to that effect.
- (b) The Developer shall not sell or convey any Lot shown on the Development Plan until this Agreement is registered on title.

16. Right of Entry

The Developer shall obtain from any Purchaser of any of the Lots shown on the Development Plan, a written statement permitting the Developer and the Town to enter upon such Lands for a period of three (3) years after the transfer thereof in order to ensure compliance with the provisions of this Agreement and shall forward an executed copy of written statement to the Town upon demand therefor.

17. Plans

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

18. Warning Clauses

- (a) The Developer acknowledges and hereby agrees to insert into all offers and agreements of purchase and sale the following clause: "The lands in the Development Plan are subject to the payment of development charges which are payable prior to the issuance of a building permit."
- (b) The Developer acknowledges and hereby agrees to insert into all offers and agreements of purchase and sale the following clause: "The lands in the Development Plan are subject to the payment of cash-in-lieu of the dedication of land for park purposes prior to the issuance of a building permit."

19. Covenants That Run With The Land

- (a) The Developer and the Town acknowledge and agree that it is their intent that all the terms, conditions and covenants contained herein shall be covenants that run with the land and that the burden of such covenants shall be binding upon the Developer, their successors and assigns, and successors in title, from time to time, of the Lands described in Schedule "A" of this Agreement and any part or parts thereof and that the benefits of the said covenants shall enure to the Town, its successors and assigns in title of all roads, Streets and public lands forming part of or abutting on the Lands described in Schedule "A".
- (b) The Developer agrees that it shall, upon the sale or transfer by it of the Lands included within the Development Plan or any part or parts thereof, require the Purchaser or Transferee thereof as a condition of such sale or transfer to execute an Agreement satisfactory in form to the Town's Solicitor, agreeing to assume this Agreement and to be bound by and fulfil all of the terms, conditions and covenants herein set forth and containing a like covenant to this effect. The said Assumption Agreement shall be executed by the Town, the Developer and any such Purchaser or Transferee and may, at the Town's option, be registered upon title. Provided, however, that such Assumption Agreement shall not be required for the sale or transfer of a Lot as shown on Lands described in Schedule "A" for the purpose of construction.

20. Notices

Any notice, demand, acceptance or request provided for in this Agreement shall be in writing and shall be deemed to be sufficiently given if personally delivered or sent by registered mail (postage prepaid) as follows:

To the Town at: Clerk
Town of Pelham
P.O. Box 400
20 Pelham Town Square
Fonthill, ON L0S 1E0

To the Owner at: Timothy and Laura Sinke
614 Metler Road,

or as such other address as the party to whom such notice is to be given shall have last notified the party giving the notice in the manner provided in this Section. Any notice delivered to the party to whom it is addressed in this Section 20 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.

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. Development Charges

The Developer agrees to provide notice to the first purchaser of any Lot in the Development, upon transfer of the Lots, of all Development Charges related to the Development, including Development Charges already paid by the Developer or Development Charges that may be payable in the future.


23. Binding Effect

This Agreement shall be binding upon the parties hereto and their heirs, executors, administrators, successors, and assigns.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date and year first above written.

WITNESS


Laura Sinke
(printed name)


(signature)

08/30/2021
(date)

TIMOTHY ISSAC SINKE

Timothy Sinke
(printed name)


(signature)

08/30/2021
(date)

WITNESS

Timothy Sinke
(printed name)

LAURA ROSE-MARIE SINKE

Laura Sinke
(printed name)

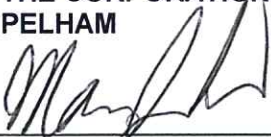

(signature)

08/30/2021
(date)


(signature)

08/30/2021
(date)

THE CORPORATION OF THE TOWN OF
PELHAM


Marvin Junkin, Mayor


Holly Willford, Clerk

SCHEDULE 'A'

LEGAL DESCRIPTION

PIN:	PIN 64035-0067 (LT)
Municipal:	614 Metler Road
Roll Number:	2732 010 008 15500

Part Lot 12 Concession 6 Pelham as in PE16008; PELHAM

TOWN OF PELHAM GENERAL LOT GRADING PLAN

LOT 12, CONCESSION 6
GEOGRAPHIC TOWNSHIP OF PELHAM

STREET & No. 614 METLER ROAD

OWNER TIM SINKE

BUILDER

EXISTING ELEVATIONS
Date Levels Taken MARCH 17, 2021

FINISHED GRADING
Date Levels Taken

Proposed Grading Certificate

I HEREBY CERTIFY THAT THE PROPOSED GRADING WILL BE COMPATIBLE WITH ADJACENT LANDS AND THAT ALL SURFACE DRAINAGE ORIGINALLY FLOWING THROUGH, ONTO OR OVER THIS SITE IS BEING ACCOMMODATED, AND THAT THIS LOT WILL DRAIN SATISFACTORILY TO THE PRESENT EXISTING GRADES OF ADJACENT PROPERTIES.

Signature _____ Date JUNE, 2021

Firm KIRKUP MASCOE URE SURVEYING LTD.

Accepted by: _____ Date _____

MUNICIPALITY

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As Constructed Grading Certificate

I HAVE TAKEN THE FIELD ELEVATIONS SHOWN (100.0) WITH RESPECT TO THE FINAL GRADING AND DO HEREBY CERTIFY THAT THE BUILDING CONSTRUCTED AND GRADING OF THE LOT IS IN CONFORMITY WITH THE PREVIOUS SUBMISSION FOR A BUILDING PERMIT. I FURTHER CERTIFY THAT THIS LOT WILL DRAIN SATISFACTORILY AND SUCH GRADING HAS NOT ADVERSELY AFFECTED ADJACENT PROPERTIES

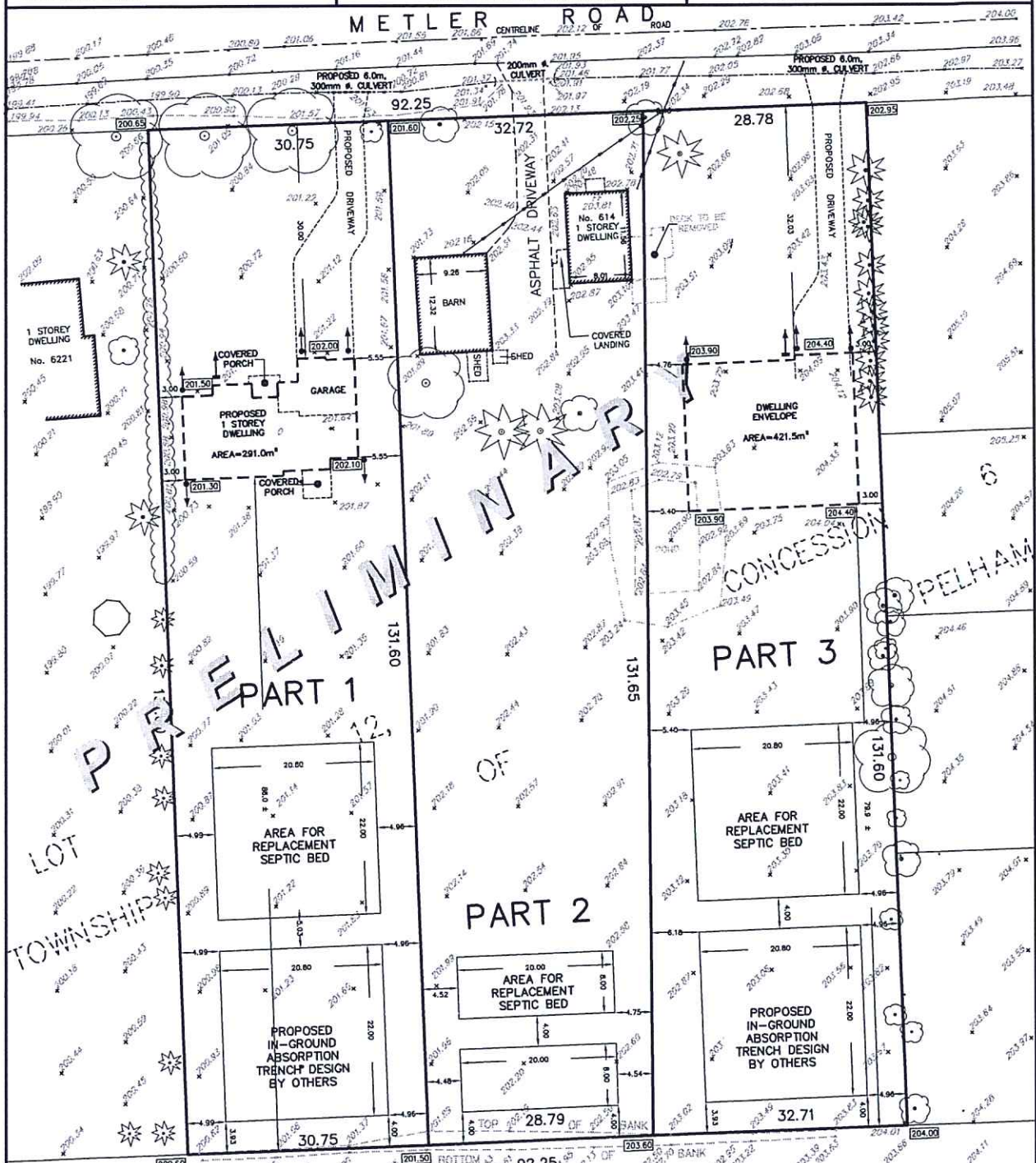
Signature _____ Date _____

Firm KIRKUP MASCOE URE SURVEYING LTD.

Accepted by: _____ Date _____

MUNICIPALITY

SCALE 1 : 500
0 10 20 metres



METRIC
DISTANCES SHOWN ON THIS PLAN ARE
IN METRES AND CAN BE CONVERTED
TO FEET BY DIVIDING BY 0.3048

NOTES:

- ALL THE DOWNSPOUTS MUST BE ON THE FRONT OF THE HOUSE AND DIRECTED TOWARDS METLER ROAD.
- GRADES NOT TO ADVERSELY AFFECT ADJUTING PROPERTIES PRIOR TO AND DURING/AFTER CONSTRUCTION.
- MATCH EXISTING PERIMETER GRADES.
- SUMP PUMP DISCHARGE TO GRADE AND TO FRONT YARD THROUGH FRONT FOUNDATION WALL ONLY.

BENCHMARK NOTE


ELEVATIONS ARE GEODETIC, RELATED
BENCHMARK 00819708354 HAVING AN
ELEVATION OF 190.433 METRES.

PART 1
TOP OF FOUNDATION - [202.30]

PART 2
TOP OF FOUNDATION - [178.30]

LEGEND

- 100.00 DENOTES EXISTING GROUND ELEVATION
- 100.00 - PROPOSED ELEVATION
- [100.00] - FINISHED ELEVATION
- ← DRAINAGE DIRECTION
- EXISTING DRAINAGE DIRECTION
- SETBACK MEASUREMENT
- ↓ DOWNSPOUT
- SUMP PUMP DISCHARGE

1	JUNE 29, 2020	INITIAL RELEASE
REVISION	DATE	REMARKS
 Kirkup Mascoe Ure Surveying A Division of J.D. Barnes Limited 40 EASTCLIFF AVE., ST. CATHARINES, ON L2P 2Y8 T: (905) 611-1007 F: (905) 611-1021 www.jdbarnes.com		
DRAWN BY: CA	CHECKED BY: RSK	REFERENCE NO: 20-49-174-00 P&G
PLOTTED: JUNE 29, 2021		DATED: JUNE 29, 2021