

THIS INDENTURE made in triplicate this 27th day of May , 1981 A.D.

BETWEEN:

DEACONDALE INCORPORATED, a company
incorporated under the laws of the
Province of Ontario

Hereinafter called "the Owner"

OF THE FIRST PART

- and -

THE CORPORATION OF THE TOWN OF PELHAM,

Hereinafter called the "Town",

of the SECOND PART.

1. 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.

2. WHEREAS the Owner purports to be the Owner of the lands in the Town of Pelham, described in Schedule "A" attached hereto and have applied, or propose 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 Land Registry Office (No. 59), Land Titles Division of Niagara South.

AND WHEREAS the Town requires the Owner, 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 (\$1.00) Dollar of lawful money of Canada now paid by the Owner to the Town (the receipt whereof is hereby acknowledged) the Parties hereto mutually covenant and agree as follows:

1. REGISTRATION:

The Owner covenant and agrees:

(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 Land Registry Office (NO. 59), Land Titles Division of Niagara South, within one (1) month after approval of "The Plan" is granted by the Minister.

2. TRANSFER TO TOWN FOR MUNICIPAL PURPOSES:

The Owner will:

(a) pay to the Town the sum of \$10,000.00 as payment of cash in
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substitution for the conveyance of 5% of the land to the Town pursuant to Section 35 (5) of The Planning Act; and,

(b) will grant such easements as may be required for telephone, or other services, free of charge.

3. CONSTRUCTION OF SERVICES:

The Owner agrees to construct and to pay the whole cost of such construction and materials required for all of the works referred to in Schedule "B" attached hereto, and in accordance with the conditions and specifications contained in such Schedule.

4. SEWAGE DISPOSAL:

The Owner shall make each lot in the plan suitable for septic tank systems to the standards of the Niagara Regional Health Unit.

5. WATER SUPPLY:

The Owner shall install storage tanks to supplement water supply to each lot of the Plan. The Owner shall install simple sand or cartridge type filters on the water supply line to each dwelling unit to ensure that acceptable iron and manganese limits are maintained.

6. STRIPPING TOPSOIL:

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

(b) The Owner agrees to insert a clause in all sales contracts that purchasers or builders will not remove topsoil or vegetation from the lots prior to making applications for building permits unless approval is otherwise granted by the Niagara Peninsula Conservation Authority and the Ministry of Natural Resources and Niagara Escarpment Commission and the Town of Pelham.

7. SURFACE DRAINAGE PLAN:

The Owner shall be responsible for providing, at his 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 upon each lot and included in each deed 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 "B". All elevations shown on Schedule "B" shall be maintained after construction of any building or structure upon the lands affected, and this provision shall be included in the building restrictions hereinbefore referred to.

8. NATURAL DRAINS:

The Owner shall not change or do any work that will prejudicially
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affect any natural watercourse or drainage ditch without making full and proper provisions for the continuance of such drainage facilities. The proposed proper provision to be made by the Owner shall be subject to approval of the Town Engineer. In the event changes are made, after having been approved by the Town Engineer, the Owner nevertheless shall be solely responsible for any damage caused thereto, and shall indemnify and save harmless the Town therefrom.

9. HYDRO:

The Owner shall pay the whole cost of and install street lighting to the Town of Pelham Standards and in accordance with plans and specifications approved by Ontario Hydro. Prior to the final approval of the proposed subdivision plan the Owner shall deposit with the Treasurer an amount estimated to cover the cost thereof, unless otherwise satisfactory arrangements are made with Ontario Hydro.

The Owner shall have the option of designing their own power distribution system, calling the tenders, and letting the contract for said work, subject to Ontario Hydro inspecting the installation.

10. REPLACING UTILITIES, ETC.:

The Owner shall assume complete responsibility and make all necessary arrangements for the moving or disturbance of any 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.

11. LIABILITY INSURANCE:

Before commencing any of the work proposed 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 One Million Dollars (\$1,000,000), indemnifying the Town until the issue of the certificate referred to in Clause 12, from any loss arising from claims for damage, injury or otherwise in connection with the work done by the Owner, their employees, servants or agents, or any independent contractor to serve the lands described in Schedule "A" attached hereto. The Owner 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.

12. 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.

13. CASH DEPOSITS:

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

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- (a) The expansion and renewal impost - \$3,800.00
- (b) The cost of power and lighting installation unless other satisfactory arrangements have been made with Ontario Hydro
- (c) Payments for improvement to existing roads - \$6,200.00
- (d) Cash in lieu of land for park purposes - \$10,000.00

14. TAXES:

The Owner agrees 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 when the said lands have been re-assessed, the Owner agrees to pay all current taxes as established by the re-assessment, or any additional amounts as thereby required.

15. 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.

16. 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 a Development Control Permit has been issued by the Niagara Escarpment Commission.

(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; if available
- (iii) telephone;
- (iv) sanitary services;
- (v) water services.

The Building Inspector will not issue occupancy permits until it has been certified that the above five services are operable on the lot for which the permit has been requested.

17. 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, in connection with the work required to be done herein by the Owner, their contractors, servants, or agents, during the period of construction.

18. SCHEDULES:

The Provisions of all Schedules attached hereto shall form part of this Agreement.

19. 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 land and that the burden of such covenants shall be binding upon the Owner, their 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, and its 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 7 (Surface Drainage Plan) which shall be in perpetuity.

20. PAYMENT FOR IMPROVEMENTS TO EXISTING ROADS:

Some of the land described in Schedule "A" attached hereto abuts the existing travelled road allowance of Metler Road. The Owner shall be required to deposit to the Town in cash the sum of as per paragraph 13 (c) being a portion of the cost of improvements to Metler Road.

21. RECOMMENDATION TO THE MINISTER:

Upon receipt of the payments required and 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

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(E.S. Bergenstern

(MAYOR

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(Mary Hockett

(CLERK

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(DEACONDALE INCORPORATED

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(Stephen Nemeth

(Stephen Nemeth - President

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SCHEDULE

" A "

LEGAL DESCRIPTION

ALL AND SINGULAR that certain parcel or tract of land and premises, situate, lying and being in the Town of Pelham, in the Regional Municipality of Niagara formerly in the County of Welland and Province of Ontario and being composed of Part of Lot 11 in the Fifth Concession of the former Township of Pelham containing by admeasurement 42.133 acres be the same more or less and which said parcel may be more particularly described as follows:

PREMISING the Southerly limit of the said Lot 11 has a bearing of North 89 degrees 28 minutes East all bearings herein being related thereto.

COMMENCING at the South-west angle of the said Lot 11;

THENCE North 89 degrees 28 minutes East in the Southerly limit of the said lot a distance of 1356.82 feet to a point;

THENCE North 1 degree 35 minutes West a distance of 1159.67 feet to a point in the Southerly limit of the lands of Ontario Hydro;

THENCE North 74 degrees 11 minutes West in the said limit a distance of 1409.12 feet to its intersection with the Westerly limit of the said Lot 11;

THENCE South 1 degree 09 minutes East in the said limit a distance of 1555.95 feet more or less to the point of commencement,

AND SUBJECT to an easement in favour of Consumers Gas Company over part of the hereinbefore described lands and more particularly described in Instrument No. 69468B.

S C H E D U L E

" B "

DRAINAGE PLAN

SCHEDULE

" C "

BUILDING RESTRICTIONS

(To be included in all deeds)

The Owner shall cause to be registered against all lots in the subdivision the **Deed Restrictions** and Restrictive Covenants outlined below:

According to the nature of the annexed instrument, the words "Vendor", "Purchaser", and "Land" shall have the following meaning:

- (a) "VENDOR" means and includes also a grantor, transferor or seller and the heirs, successors and assigns of the Vendor.
- (b) "PURCHASER" means and includes also a grantee, transferee or buyer and the heirs, successors and assigns of the Purchaser.
- (c) "LAND" means and includes the land intended to be sold, conveyed or transferred by such instrument.

The Purchaser shall in respect of the herein described land adhere to and comply with the lot drainage plan attached to the Subdivider's Agreement registered in the Registry Office for the Registry Division of Niagara South as No. and in particular shall do nothing to interfere with or impede the drainage patterns shown thereon. All grade elevations shown on the said lot drainage plan shall be maintained after construction of any building or structure upon the herein described land. In the event that the Purchaser fails to maintain such elevations, or to maintain the proper grades and levels herein referred to, or in the event that the Purchaser impedes any drainage system or pattern on the herein described lands or neighbouring lands, the Purchaser shall be responsible for the immediate rectification and alteration of the land to conform with the drainage system or patterns laid out in the Subdivider's Agreement and for any consequential damages, costs, expenses or other loss caused by the failure to maintain such grades or drainage patterns.

The Purchaser shall maintain the road allowance between the lot line and the curb nearest thereto in good condition and free from weeds and shall cut the grass thereon at frequent intervals.

The Purchaser shall not remove topsoil or vegetation from the lots prior to making application for building permits unless approval is otherwise granted by the Niagara Peninsula Conservation Authority and the Ministry of Natural Resources.

The Purchaser shall not occupy the dwelling on the lot concerned until the Building Inspector for the Town has certified that such of the following services as are applicable to the property have been installed and are operating adequately to serve the dwelling, or in the case of telephone services are at least available to houses within the Plan:

- (i) hydro;
- (ii) telephone;
- (iii) sanitary services;
- (iv) water service.

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SCHEDULE "C" - BUILDING RESTRICTIONS: (con't)

The Purchaser shall not impede by the placing of fill, buildings, or other structures or works, any natural watercourse which exists on the property.

TO BY-LAW #699 (1981)

