



THE CORPORATION OF THE CITY OF BRAMPTON

BY-LAW

Number 89-91

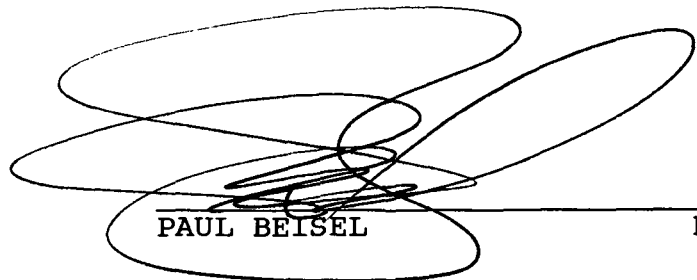
To authorize the execution of an agreement between
Allan Kerbel Investments Limited and
The Corporation of the City of Brampton and
The Regional Municipality of Peel and
The Manufacturers Life Insurance Co. and
Canadian Imperial Bank of Commerce

The Council of the Corporation of the City of Brampton

ENACTS as follows:

1. The Mayor and the Clerk are hereby authorized to execute an agreement dated 1991 05 13, between Allan Kerbel Investments Limited and The Corporation of The City of Brampton and The Regional Municipality of Peel and The Manufacturers Life Insurance Co. and Canadian Imperial Bank of Commerce and all other documents approved by the City Solicitor required to implement the provisions of this agreement.

READ a FIRST, SECOND and THIRD TIME and PASSED in Open Council this 13th day of May 1991.



PAUL BEISEL

MAYOR



LEONARD J. MIKULICH

CLERK

REZONING/SITE PLAN AGREEMENT

MEMORANDUM OF AGREEMENT made in duplicate
this 13th day of May, 1991.

B E T W E E N :

ALLAN KERBEL INVESTMENTS LIMITED,
hereinafter called the "Owner"
OF THE FIRST PART,

A N D

THE CORPORATION OF THE CITY OF BRAMPTON,
hereinafter called the "City"
OF THE SECOND PART,

A N D

THE REGIONAL MUNICIPALITY OF PEEL,
hereinafter called the "Region"
OF THE THIRD PART,

A N D

THE MANUFACTURERS LIFE INSURANCE COMPANY and
CANADIAN IMPERIAL BANK OF COMMERCE,
hereinafter called the "Mortgagees"
OF THE FOURTH PART,

WHEREAS the Owner warrants that it is the owner of the lands more particularly described in Schedule A annexed hereto (herein called the "lands"), and further warrants that the Mortgagees are the only mortgagees of the lands;

AND WHEREAS the Owner wishes to develop the lands and the City is of the opinion that this development would not be proper and in the public interest unless assurances are given by the Owner that the matters and things referred to in this agreement will be done in the manner hereinafter set forth;

AND WHEREAS the lands are situate in the site plan control area designated by By-law 96-86 passed pursuant to section 40 of the Planning Act, S.O. 1983, c. 1, as amended, and this agreement is required pursuant thereto.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the City approving the development of the land, approving the plan referred to in this agreement and where necessary rezoning the lands to permit the development, the Owner and the Mortgagee hereby covenant, promise and agree with the City as follows:

1.
Works

For the purposes of this agreement, the "works" shall mean all servicing and landscaping required to be done by the Owner under the terms of this agreement and without limiting the generality of the foregoing, the works shall include all grading, storm drainage works, driveways, ramps, parking areas,

landscaping, including boulevard landscaping, road works, including all curbs, gutters and drainage works, sidewalks, bus stop pads, facilities for lighting including floodlighting, vaults, central storage and collection areas and other facilities and enclosures for the storage of garbage and other waste material, fencing and all internal sanitary sewers, watermains, storm sewers, service connections and all other matters required to be done by the Owner under the terms of this agreement.

2.
Lands
Affected

2.1 The lands more particularly described in Schedule A annexed hereto are the lands affected by this agreement.

Approved
Site
Plan

2.2 The Owner further agrees that the lands shall be developed only in accordance with the site plan and drawings referred to in Schedule B attached hereto (herein called the "site plan") and further covenants and agrees to provide all of the works and other matters referred to in this agreement (including Schedule D attached hereto) and shown on the site plan and all other approved plans referred to in Schedule B attached hereto and in addition to the maintenance requirements set out in paragraph 17.4 of this agreement to maintain to the satisfaction of the City and at the sole risk and expense of the Owner, all of the works and other matters required by this agreement and in default thereof, the provisions of section 325 of the Municipal Act, R.S.O. 1980, chapter 302, as amended, shall apply.

Rezoning

2.3 In the event a rezoning is required to permit the development of the lands in accordance with the site plan, this agreement shall be conditional upon this rezoning by-law coming into force, failing which this agreement shall be null and void and not binding upon the Owner.

ENGINEERING, LANDSCAPING AND BUILDING REQUIREMENTS

3.
Commis-
sioner of
Public
Works

For the purpose of this agreement, "Commissioner of Public Works" shall mean the Commissioner of Public Works and Buildings for the City of Brampton, except for that work for which the Region is responsible, in which case the "Commissioner of Public Works" shall mean the Commissioner of Public Works for the Region of Peel.

4.
Ingress
& Egress

The Owner shall restrict the means of vehicular ingress and egress to the lands to those locations indicated on the site plan and if required by the City, the Owner agrees to convey to the City, free of all encumbrances, the one foot reserves shown on the site plan and referred to in Schedule C attached hereto as a further means of controlling ingress and egress from the

lands. All off-street vehicular loading and parking areas, access ramps and access driveways including driveways for emergency vehicles shown on the site plan shall be constructed and asphalted in accordance with the approved plans referred to in this agreement.

5.
Access

The Owner shall use only such locations for access for construction purposes as the Commissioner of Public Works may approve.

6.
Clean
Site

6.1 During construction, the Owner agrees to employ and keep employed a sufficient number of sweepers or workmen or use such means as may be necessary to keep the adjacent pavement and sidewalks in a clean condition and free from earth and mud. The Commissioner of Public Works may give the Owner twenty-four (24) hours notice to remove and clean up any earth and mud from such pavement and sidewalks and in default the Commissioner may cause such work to be done either by the Municipality's own equipment and employees or by an independent contractor and the cost thereof shall be paid by the Owner forthwith upon being invoiced therefor by the Commissioner. The cost of such work shall be deemed to be the actual cost as submitted by the contractor or as determined by the Commissioner of Public Works, plus one hundred per cent (100%) thereof for administration.

6.2 The Owner shall take all precautions necessary to protect the public against injury on any lands set out in the site plan and where necessary keep danger signals out at night and at such other times and places as public safety may be required.

7.
Construc-
tion

7.1 The Owner will be responsible for any damage caused to the roadways, curbs, pavements, boulevards, or plantings thereon caused by the construction carried out on the Owner's site by the Owner, its agents, servants, employees, subcontractors or material suppliers.

7.2 All matters incidental to the provision of all the works and other matters referred to in this agreement and shown on the site plan and all other approved plans referred to in this agreement, including the removal and planting of trees, cutting, repaving and installing driveways, relocating utilities, pipes, poles, valves and equipment, resetting drains and manholes shall be carried out by the Owner at its own risk and expense to the satisfaction of the owner of the utilities.

7.3 The Owner shall not do any blasting or use any pile driving equipment on lands owned by the City or the Region or both of them without the written consent of the City or the Region or both of them. Should the

Owner perform or authorize to be performed any blasting or pile driving, the Owner shall provide insurance coverage satisfactory to the City for damage or loss from blasting or pile driving.

Storm
Drainage

8.1 The final grade of the lands shall be so fixed to the satisfaction of the Commissioner of Public Works that the surface water originating on or tributary to the lands, including the roof water from the buildings, will be discharged into the storm sewer system of the City in the manner shown on the approved plans referred to in Schedule B attached hereto.

8.2 The grading and drainage plan required to be approved pursuant to this agreement shall show the lands drained by a totally self-contained drainage system within the lands. This drainage system shall not adversely affect the drainage of abutting lands.

8.3 Prior to any reduction in the security posted for public works purposes or occupancy of the building, the Owner's engineering consultant shall certify to the City Public Works Department that all storm water management works have been constructed in accordance with the approved grading and drainage plan.

9.
Approved
Plans

9.1 The Owner shall, at its own expense:

9.1.1 carry out, provide, install, erect, construct, and complete in a good and workmanlike manner to the satisfaction of the City, all the works in accordance with and as shown on detailed plans and specifications for those works which have been or shall be approved by the Commissioner of Public Works, and the Commissioner of Planning and Development as the case may be. These detailed plans and specifications are more particularly described and referred to in Schedule B attached hereto.

9.1.2 make payment for, perform, fulfill, carry, out, provide, install, erect, construct and complete in a good and workmanlike manner to the satisfaction of the City all works and other matters referred to in Schedule D attached hereto, all in accordance with and as shown on detailed plans and specifications for these works or other matters which have been or shall be approved by the Commissioner of Public Works and the Commissioner of Planning and Development as the case may be.

9.2 In the event:

9.2.1 any of the plans referred to in Schedule B attached hereto, including the site plan, are not approved prior to the execution of this agreement; or

9.2.2 any approved plan referred to in Schedule B attached hereto is subsequently amended,

such plans when approved or approved as amended shall be deemed to be an approved plan within the meaning of this agreement and all of the provisions of this agreement shall apply to it.

9.3 The Owner shall:

9.3.1 provide competent engineering inspection to the satisfaction of the City for all works constructed on public lands, including road allowances,

9.3.2 prepare and provide to the City a certificate from a professional engineer which certifies to the Commissioner of Public Works that all of the works constructed on public lands, including road allowances, and all lot grading shown on the approved plans have been constructed in accordance with the approved plans and in accordance with good engineering practice, and

9.3.3 prepare and provide the City with a complete set of Mylar "as constructed" drawings for all works constructed on public lands, including road allowances, and for all lot grading shown on the approved plans.

10.
Cash-in-
Lieu

10.1 The Commissioner of Planning and Development may, in his sole discretion, exercise in writing at any time prior to the issuance of any building permits, require the Owner to pay to the City or to the Region or to both of them an amount equal to the cost of constructing or providing any of the works required by this agreement as estimated by the Commissioner of Planning and Development in lieu of the Owner constructing or providing these works. This payment shall be made prior to the issuance of any building permits.

Additional
Works

10.2 If, in the opinion of the Commissioner of Public Works, exercised in accordance with sound and reasonable engineering principles, additional works are necessary to ensure that the works shown on the approved plans referred to in this agreement function properly, the Owner shall, at its own expense, construct, install or perform such additional works at the request of the Commissioner of Public Works.

11.
Existing
Trees

All existing trees to be retained as shown on the approved landscape and fencing plan shall be fenced and protected during construction in accordance with City specifications. No existing trees, other than those presently approved for removal in accordance with the approved landscape and fencing plan, shall be removed without the prior written approval of the Commissioner of Planning and Development. In the event it is intended that a building permit be issued prior to approval of the landscape and fencing plan, the

Commissioner of Planning and Development shall, prior to the issuing of a building permit, designate the existing trees which are to be retained and these trees shall be fenced and protected during construction in accordance with City specifications.

12.
Occupancy

12.1 The Owner covenants that it will not occupy or permit the occupation of any building or parts thereof shown on the site plan:

12.1.1 until the internal sanitary sewers, hydro service, internal watermains, internal storm sewers, service connections, plumbing, off-street vehicular loading and parking areas, access ramps and driveways complete with curbs and asphalt, have been properly installed and approved, and

12.1.2 except in accordance with the provisions of the Building Code Act, R.S.O. 1980, chapter 51, as amended, and all regulations made pursuant thereto, and

12.1.3 until the landscape and fencing plan required by this agreement is approved by the Commissioner of Planning and Development.

12.2 Upon application by the Owner, occupancy may be permitted prior to the completion of the off-street vehicular loading and parking areas and access ramps and driveways, provided that all other requirements for occupancy have been complied with.

13.
Landscap-
ing and
Fencing

13.1 The Owner shall, in addition to all other landscaping required by this agreement, provide Boule-
boulevard landscaping (which may include tree planting) on the boulevards of all public highways abutting the lands. The exact location and detailed specifications for this work shall be shown on the approved landscape and fencing plan required by this agreement.

13.2 The Commissioner of Planning and Development may in his sole discretion not require the landscape and fencing plan required by this agreement to be approved prior to the issuance of the building permit for the building shown on the site plan. In this event, the Owner agrees that the landscape and fencing plan shall be submitted to and approved by the Commissioner of Planning and Development prior to the occupancy of the building or parts thereof as shown on the site plan.

13.3 All landscaping shown on the approved land-
scape and fencing plan shall be completed within twelve (12) months following the issue of the building permit for the building shown on the site plan except for buildings to be occupied between November 1st in any year and June 15th in the following year, in which case the landscaping shall be completed by June 30th following such occupancy. The Commissioner of Planning and Development may extend the time for completion of the landscaping or part thereof in such circumstances as he in his sole discretion considers advisable.

13.4 The Owner shall construct or erect fencing as and where required by the Commissioner of Planning and Development. The location and type of the fencing is shown on the approved landscape and fencing plan referred to in Schedule B attached hereto, or shall be shown on the landscape and fencing plan to be approved. All fencing shall be completed within the time set for completion of the landscaping except that where deemed necessary by the Commissioner of Planning and Development, fencing can be required to be completed prior to occupancy.

OTHER APPROVALS

14.
Regional
Services

14.1 The City shall not issue any building permits until provided with confirmation in writing from The Regional Municipality of Peel (herein called the "Region") that the Owner has made satisfactory arrangements with the Region for the provision to the lands of all services under the jurisdiction of the Region. All works, services and other matters under the jurisdiction of the Region which are required to be provided by this agreement, shall be completed in a good and workmanlike manner to the satisfaction of and in accordance with detailed plans and specifications for such works which have been or shall be approved by the Region.

MT(O)

14.2 The Owner shall, prior to the issuance of any building permits, obtain all necessary permits and approvals required by the Ministry of Transportation (Ontario).

15.
Hydro
Services

The City shall not issue any building permits until provided with confirmation in writing from the proper authority having jurisdiction over hydro services that satisfactory arrangements have been made for the provision of hydro services to the lands.

FINANCIAL

16.
City
Capital
Contribu-
tions

16.1 The Owner covenants and agrees to unconditionally pay to the City without protest or qualification the capital contributions set forth in Schedule E attached hereto in the manner and at the times set forth in Schedule E.

The City capital contributions required under this agreement may be changed from time to time by resolution of the Council of the City provided that in no event shall any such change in the capital contributions of the City take effect with respect to the development covered by this agreement earlier than two (2) full calendar years from the date upon which the City Council passed its by-law authorizing the execution of this agreement.

The Owner agrees that after the aforesaid two (2) year period, any resolution of the City Council altering the aforesaid capital contributions shall be deemed to automatically amend this agreement and the City agrees that copies of any such resolutions shall be made available to the Owner upon request.

Regional
Levies

16.2

16.2.1

the Owner covenants and agrees to unconditionally pay to the Region without protest or qualification, the levies set forth in Schedule F attached hereto, in the manner and at the times set forth in Schedule F and the Owner further agrees that the policies set forth in Schedule F shall be binding upon the Owner and the Owner further agrees to comply with all the provisions of it.

16.2.2

the Peel lot levy policy may be changed from time to time by resolutions of the Council of the Region. Subsequent changes in the Peel lot levy policy shall be effective for the purposes of this agreement, provided that no such change shall take effect earlier than two (2) full years after the date upon which the Council of the City of Brampton passes a by-law authorizing the execution of this agreement.

16.3

The Owner agrees that all municipal taxes in arrears and current taxes for which a bill has been issued shall be paid in full before a building permit is issued.

Cash-in
-Lieu
- Parkland

16.4

The Owner shall pay to the City prior to the issuance of any building permits, money in an amount to be determined by the City, in lieu of the conveyance of land for park or other public recreational purposes, pursuant to the requirements of section 41 of the Planning Act, 1983, as amended.

17.
Security

17.1

Prior to the issuance of any building permits or if requested by the City, the Owner shall deposit as a performance guarantee, cash or a letter of credit from a chartered bank or other negotiable security approved by the City Treasurer (herein called the "security") in the amount of One Hundred Per cent (100%) of the cost of all works required by this agreement as estimated by the Commissioner of Planning and Development, the Commissioner of Public Works, and/or the Commissioner of Community Services (herein collectively called the "Commissioner[s]"). Without limiting the generality of the foregoing, the works for which security is required, shall include:

17.1.1

all the works required by this agreement to be constructed on public lands or for public works purposes, including but not limited to retaining walls, grading of the lands, and access to the lands;

17.1.2

all landscaping and fencing shown on the approved site plan and landscape and fencing plan;

17.1.3 all services constructed on land being part of the common elements of any condominium corporation and without limiting the generality of the foregoing, shall include all internal sanitary sewers, internal water-mains, internal storm sewers, service connections, internal roads, sidewalks, walkways, and parking areas.

17.2 Upon the failure by the Owner to complete a specified part of the work for which security is deposited when requested by the Commissioner[s] and in the time requested, the City Treasurer may, at any time, authorize the use of all or part of the security to pay the cost of any part of such works the Commissioner[s] may deem necessary, notwithstanding the specific allotment of security for works set out in paragraph 1 of Schedule D to this agreement.

17.3 The Owner may, from time to time, apply to the City for a reduction in the amount of the security by an amount up to ninety per cent (90%) of the value of the works for which security was deposited, which the Commissioner[s] certified in writing to be satisfactorily completed upon receipt of:

17.3.1 a statutory declaration that all accounts relative to the installation of the completed works have been paid;

17.3.2 a certificate of the Owner's consulting engineer, and/or architect and/or landscape architect certifying that it has received no notice of lien in respect of that part of the completed works constructed on lands owned by the City; and

17.3.3 all certificates of the substantial performance of all contracts and subcontracts as required by the Construction Lien Act, for all such works constructed on lands owned by the City, together with proof of publication thereof.

Guaranteed 17.4

Maintenance 17.4.1

the Owner shall maintain all of the works for which security was taken for a period of two (2) years following the date of the certificate of satisfactory completion of such works.

17.4.2

the remaining ten per cent (10%) of the security shall be retained by the City until the expiration of the aforesaid maintenance periods and the Commissioner[s] have finally approved the works for which security is deposited. Prior to the expiration of the maintenance period, the Commissioner[s] shall inspect the works for which security is deposited and all defects disclosed by such inspection shall be remedied by the Owner at its own expense prior to the release of the remaining ten per cent (10%) of the security to the Owner.

Default
& Entry
Lands

17.5 If, in the opinion of the Commissioner[s] the Owner is not executing or causing to be executed any works required in connection with this agreement within the specified time, or in order that it may be completed within the specified time or is improperly performing the work, or shall the Owner neglect or abandon such works before completion or unreasonably delay the same so that the conditions of this agreement are being violated, or carelessly executed, or shall the Owner neglect or refuse to renew or again perform such work as may be rejected by the Commissioner[s] as defective or unsuitable, or shall the Owner, in any manner in the opinion of the Commissioner[s] make default in performance in the terms of this agreement, then in such case the Commissioner[s] shall notify the Owner in writing of such default or neglect and if such default or neglect not be remedied within ten (10) clear days after such notice, then in that case the Commissioner[s] thereupon shall have full authority and power immediately to purchase such materials, tools and machinery and to employ such workmen as in its opinion shall be required for the proper completion of the said works at the cost and expense of the Owner. In cases of emergencies, such work may be done without prior notice but the Owner shall be notified forthwith. The cost of such work will be calculated by the Commissioner[s], whose decision shall be final. It is understood and agreed that such cost shall include a management fee of fifteen per cent (15%) of the cost of the labour and materials. Any work done at the direction of the Commissioner[s] pursuant to the provisions of this clause shall not be an assumption by the City of any liability in connection therewith nor a release of the Owner from any of its obligations under this agreement.

Inspection of
Works

17.6 The Owner hereby grants to the City, its servants, agents and contractors, the licence to enter the lands for the purpose of inspection of any of the works referred to in this agreement and to perform such work as may be required as a result of a default.

18.
Insurance

18.1 The Owner shall take out and keep in full force and effect during the term of this agreement, including the period of guaranteed maintenance, as determined in subsection 17.4, at its sole cost and expense, the following insurance:

18.1.1 comprehensive general liability insurance applying to all operations of the Owner which shall include bodily injury liability and property damage liability, completed operations liability and contractual liability. This policy shall contain no exclusions for damage or loss from vibration (excluding pile driving), the removal or weakening of support, shoring, and underpinning or from any other activity or work that may be done on land owned by the City or the Region or both of them in connection with the development of the lands.

Such policy shall be written with limits of not less than **THREE MILLION DOLLARS (\$3,000,000.00)** exclusive of interest or costs, per occurrence and shall include as an additional insured the City [and the Region], and

18.1.2 automobile liability insurance with an inclusive limit of liability of **ONE MILLION DOLLARS (\$1,000,000.00)**, exclusive of interest or costs, per occurrence for loss or damage resulting from bodily injury to or death of one or more persons and for loss or damage to property;

18.2 Such policies shall not be terminated, cancelled, or materially altered unless written notice of such termination, cancellation, or material alteration is given by the insurers to the City at least thirty (30) days before the effective date thereof.

18.3 All policies of insurance stipulated herein will be with insurers acceptable to and in a form satisfactory to the City.

18.4 If required by the City, the Owner shall prove to the satisfaction of the City that all premiums on such policy or policies have been paid and that all insurance is in full force and effect.

18.5 The Owner shall deposit with the City, prior to the issuance of a building permit, a certificate of insurance on a form provided by the City.

18.6 The Owner shall file a renewal certificate with the City not later than one (1) month before the expiry date of any policy provided pursuant to this agreement, until the City has indicated in writing that the policy need not continue in force any longer. In the event that such renewal certificate is not received, the City shall be entitled to either renew the policy at the expense of the Owner or to order that all work on the land within the plans cease until the policy is renewed.

18.7 The issuance of such a policy of insurance shall not be construed as relieving the Owner from the responsibility for other or later claims, if any, for which it may be held responsible.

GENERAL

19.
Convey-
ances

19.1 The Owner shall, by no later than sixty (60) days from the date the rezoning by-law, required to permit the development of the lands in accordance with

the site plan, comes into force or prior to the issuance of a building permit, whichever shall occur first, and at its own expense, including all surveying and registration expenses, convey to the City and/or the Region, free of all encumbrances, and with a good and marketable title, the lands and easements referred to in Schedule C attached hereto.

Solicitor's
Certificate

19.2 The Owner shall provide the City with a Solicitor's Certificate prior to the issuance of any building permits certifying that the lands to be or already conveyed to the City pursuant to this agreement are free from all encumbrances and that the City and/or the Region as the case may be is or will be the registered owner thereof.

20.
Glare

All floodlighting on the land shall be designed and oriented so as to minimize glare on adjacent roadways and other properties.

21.
Snow
Removal

The Owner shall, at its own expense, remove all ice and snow from the access ramps and driveways, parking and loading areas and walkways, all as shown on the site plan.

22.
Indemni-
fication

The Owner shall indemnify the City against all actions, suits, claims, demands and costs, whatsoever arising by reason of the Owner, his agents or employees doing, failing to do, or doing incorrectly or negligently anything he is required to do by the terms of this agreement.

23.
The
Construc-
tion Lien
Act

23.1 The Owner shall comply with all of the provisions of the Construction Lien Act, 1983, as amended from time to time (herein called the "Act") and without limiting the generality of the foregoing, shall hold in its possession all the statutory holdbacks and any additional funds required to be held by the Act. These holdbacks and funds shall not be disbursed except in accordance with the Act.

23.2 The Owner shall, at its own expense, within ten (10) days of receiving written notice from the City and/or the Region to do so, pay, discharge, vacate, and obtain and register a release of, all charges, claims, liens, and all preserved or perfected liens, made, brought or registered pursuant to the Act which affect any lands owned by the City, including public highway, and which arise out of the performance of this agreement by the Owner and its servants, employees, agents and contractors.

23.3 The Owner shall indemnify and hold harmless the City and/or the Region from all losses, damages, expenses, actions, causes of action, suits, claims, demands and costs whatsoever which may arise either

directly or indirectly by reason of any failure, neglect or refusal by the Owner to comply with the Act or by reason of any action brought against the City and/or the Region pursuant to the Act and arising out of the performance of this agreement by the Owner and its servants, employees, agents and contractors.

23.4 The City Treasurer may, at any time, authorize the use of all or part of the cash deposit, letter of credit or other negotiable security referred to in paragraph 17 of this agreement:

23.4.1 to pay, discharge, vacate, and obtain and register a release of all charges, claims, liens, and all preserved or perfected liens, made, brought or registered pursuant to the Act which affect any lands owned by the City, including public highways, in the event the Owner defaults on the performance of paragraph 23.2 of this agreement; and

23.4.2 to pay to the City and/or the Region any amounts owing to them pursuant to paragraph 23.3 of this agreement.

23.5 The Owner acknowledges that the City shall not be required to reduce or release the cash deposit, letter of credit or other negotiable security in accordance with clause 17 of this agreement until the City is satisfied that all of the provisions of paragraphs 23.1, 23.2 and 23.3, together with all other applicable provisions of this agreement have been complied with.

24. Waste Disposal Facilities The Owner agrees that in the event food service facilities are constructed on the lands, these facilities shall have inside self-contained temperature controlled refuse rooms.

25. By-laws Notwithstanding any of the provisions of this agreement, the Owner, its successors and assigns, shall be subject to all of the by-laws of the City presently in force.

26. Agreement Binding The Owner shall not call into question directly or indirectly in any proceedings whatsoever in law or in equity or before any administrative tribunal the right of the City 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.

27. Cost of Registration The Owner and the Mortgagees consent to the registration of this agreement on the title to the lands and the Owner agrees to pay to the City the cost of this registration and the cost of registration of all convey-

ances of land, grants of easement, and other documents required by this agreement on the title to the whole or any part of the lands. Prior to the issue of a building permit, the Owner shall deposit with the City a sum of money estimated by the City Solicitor to cover the cost of this registration and this deposit shall be adjusted by additional payments or refunds based on the actual total cost of registration.

28.
Mortgagees

28.1 The Mortgagees hereby covenant with the City and the Region that in the event of having obtained or having transferred to the said Mortgagees the equity of redemption in the lands or title to the lands, then:

28.1.1 if any Mortgagee retains all or part of the lands and develops the lands as an owner, either alone or in combination with another person, the Mortgagee so developing the lands will be subject to the terms of this agreement in the same manner as if that Mortgagee had executed this agreement in the capacity of owner, and

28.1.2 in the event of a sale or the conveyance of the Mortgagee's entire freehold interest in the lands to a person who intends to develop the lands as an Owner, the Mortgagees shall require as a condition precedent to the closing of any such sale or conveyance, that the new owner (the purchaser) will have covenanted with the City and the Region to perform and undertake all of the terms of this agreement in the same manner as if the purchase had executed this agreement in the capacity of owner.

28.2 The parties hereto further covenant and agree that nothing contained in this agreement shall require the Mortgagees or their successors and assigns to proceed with the development of the lands and whether they do or not, the City and the Region may retain and call upon all securities and insurance, if any, required to be furnished herein by the Owner to be used in accordance with the terms of this agreement.

29.
Termination

In the event that the Owner has not completed an application for a building permit within six (6) months or has not commenced construction within eighteen (18) months of the date of execution of this agreement by the City [and the Region], then at the option of the City [or the Region], this agreement becomes null and void and of no effect.

30.
Schedules

This agreement and any schedules attached hereto contain the entire and only agreement between the Owner and the City [and the Region] relating to the subject matter herein. This agreement may not be altered or otherwise modified, except in writing and executed by the Owner and the City [and the Region].

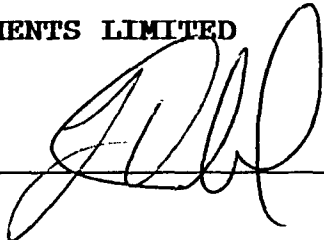
31.
Successors
and
Assigns

The covenants, agreements, conditions and undertakings herein contained on the part of the Owner shall run with the lands and shall be binding upon it and upon its successors and assigns and shall be appurtenant to the adjoining highway in the ownership of the City of Brampton and/or The Regional Municipality of Peel.

IN WITNESS WHEREOF THE PARTIES HERETO have hereunto affixed their corporate seals attested by the hands of their proper officers duly authorized in that behalf.

ALLAN KERBEL INVESTMENTS LIMITED

(Print NAME of signatory)

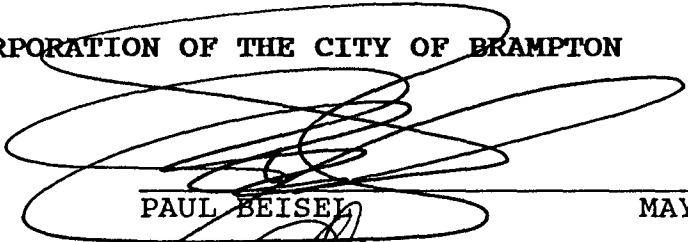

_____ TITLE

(Print NAME of signatory)

_____ TITLE

THE CORPORATION OF THE CITY OF BRAMPTON

AUTHORIZATION BY-LAW.	
NUMBER	<u>89-91</u>
PASSED BY CITY	
COUNCIL ON THE	<u>134th</u>
DAY OF	<u>May</u> 19 <u>91</u>


_____ MAYOR


LEONARD J. MIKULICH _____ CLERK

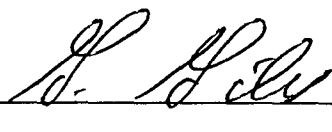
THE REGIONAL MUNICIPALITY OF PEEL

_____ R. KENT GILLESPIE SOLICITOR

_____ DEBORAH E. TROUTEN CLERK

THE MANUFACTURERS LIFE INSURANCE COMPANY

(Print NAME of signatory)


_____ TITLE

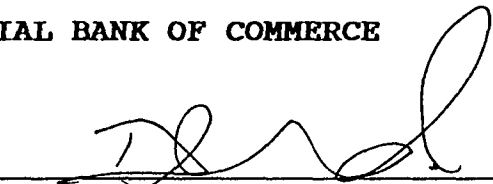
GARY G. GILES ASSISTANT INVESTMENT VICE-PRESIDENT CANADIAN MORTGAGES

(Print NAME of signatory)

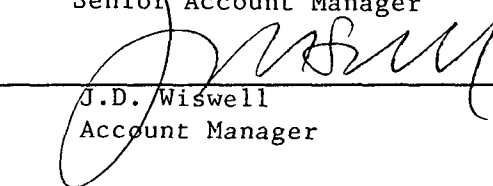
_____ TITLE

CANADIAN IMPERIAL BANK OF COMMERCE

(Print NAME of signatory)


D.G. McLeod _____ TITLE
Senior Account Manager

(Print NAME of signatory)


J.D. Wiswell _____ TITLE
Account Manager

SCHEDULE A

LEGAL DESCRIPTION OF THE LANDS

The City of Brampton, Regional Municipality of Peel (formerly Township of Toronto, County of Peel) part of Lots 13 and 14, Concession 1, West of Hurontario Street designated as Part 1 on Plan 43R-12054, save and except Parts 1, 2, 3, 4, 5 and 7 on Plan 43R-12358.

SCHEDULE B

SCHEDULE OF APPROVED PLANS

DESCRIPTION OF PLAN	SPECIAL REQUIREMENTS TO BE SHOWN THEREON
1. SITE PLAN	<p>A DETAILED SITE PLAN SHALL BE APPROVED IN ACCORDANCE WITH THE CITY'S SITE PLAN CONTROL AREA BY-LAW PRIOR TO THE APPLICATION FOR ANY BUILDING PERMIT. This detailed Site Plan shall show, among other things, the exact location and detailed specifications for the following works:</p> <ul style="list-style-type: none">i) full access onto Ray Lawson Boulevard;ii) right out access only onto Cherrytree Drive; andiii) right-in/right-out access only onto Hurontario Street.
2. ELEVATION CROSS-SECTION DRAWINGS	<p>DETAILED ELEVATION CROSS-SECTION DRAWINGS SHALL BE APPROVED IN ACCORDANCE WITH THE CITY'S SITE PLAN CONTROL AREA BY-LAW PRIOR TO THE APPLICATION FOR ANY BUILDING PERMIT.</p>
3. LANDSCAPE & FENCING PLAN	<p>A DETAILED LANDSCAPE AND FENCING PLAN SHALL BE APPROVED IN ACCORDANCE WITH THE CITY'S SITE PLAN CONTROL AREA BY-LAW PRIOR TO THE APPLICATION FOR ANY BUILDING PERMIT. This detailed Landscape & Fencing Plan shall show, among other things, the exact location and detailed specifications for the following works:</p> <ul style="list-style-type: none">i) a minimum 18.0 metre wide landscaping strip along the Cherrytree Drive frontage of the lands except at the access driveway;ii) boulevard trees in locations satisfactory to the Commissioner of Planning and Development; andiii) a 1.8 metre high masonry wall along the south boundary of the lands.
GRADING & DRAINAGE PLAN	<p>A DETAILED GRADING AND DRAINAGE PLAN SHALL BE APPROVED IN ACCORDANCE WITH THE CITY'S SITE PLAN CONTROL AREA BY-LAW PRIOR TO THE APPLICATION FOR ANY BUILDING PERMIT.</p>

DESCRIPTION
OF PLAN

SPECIAL REQUIREMENTS TO BE SHOWN THEREON

ENGINEERING
& SERVICING PLAN

DETAILED ENGINEERING & SERVICING PLAN SHALL BE APPROVED IN ACCORDANCE WITH THE CITY'S SITE PLAN CONTROL AREA BY-LAW PRIOR TO THE APPLICATION FOR ANY BUILDING PERMIT.

6. FIRE
PROTECTION PLAN
(INCLUDING
INTERNAL AND
EXTERNAL FIRE
HYDRANTS)

A DETAILED FIRE PROTECTION PLAN SHALL BE APPROVED IN ACCORDANCE WITH THE CITY'S SITE PLAN CONTROL AREA BY-LAW PRIOR TO THE APPLICATION FOR ANY BUILDING PERMIT.

SCHEDULE C

LANDS TO BE CONVEYED TO THE CITY OF BRAMPTON

A 0.3 metre reserve along the Hurontario Street frontage of the lands except at the approved access location.

NOTE:

ALL CONVEYANCES shall be completed within sixty (60) days from the date rezoning By-law No. comes into force or prior to the issuance of any building permits, whichever shall occur first.

Building permits will not be issued until all of the foregoing transfers have been registered by the City and the Region.

In order to avoid delays, the Owner is requested to submit draft reference plans and draft transfers for the foregoing lands to the City and the Region as soon as possible after the Owner is advised of the conveyancing requirements of the City and the Region.

SPECIAL PROVISIONS

1.
Security

The security required by paragraph 17.1 of this agreement shall be in the total amount of

DOLLARS AND

CENTS (.00)

being one hundred per cent (100%) of the cost of:

1.1 all the works required by this agreement to be constructed on public lands or for public works purposes, including but not limited to retaining walls, grading of the lands, and access to the lands:

SECURITY REQUIRED: to be determined prior to the issuance of building permit.

1.2 all landscaping and fencing shown on the approved site plan and landscape and fencing plan:

SECURITY REQUIRED: to be determined prior to the issuance of building permit.

2.
Rear
Elevations

The Owner agrees to provide landscape and architectural treatment for the rear of all buildings and structures that is similar in quality to that provided for the front elevations of the buildings, all to the satisfaction of the City.

3.
0.3 metre
Reserves

The Owner shall provide the necessary surveys and documentation to lift the 0.3 metre reserves along Cherrytree Drive and Ray Lawson Boulevard at the approved access locations.

4.
Cherrytree
Drive

The Owner agrees that there shall be no signs or advertising devices installed or placed along the Cherrytree Drive frontage of the lands.

5.
Bus Pads
and Shelters

The Owner agrees to install concrete bus stop pads and bus shelters on the south side of Ray Lawson Boulevard and on the west side of Hurontario Street abutting the lands at locations satisfactory to the Commissioner of Community Services or to provide cash-in-lieu thereof prior to the issuance of a building permit.

6.
Phasing

The Owner agrees that the development of the lands, including the construction of the underground parking garage, shall be phased to the satisfaction of the City. Prior to obtaining site plan approval, the Owner shall submit a phasing scheme for approval by the City which shall address the issues of construction access, temporary parking arrangements during construction and provision of site services, landscaping, fencing and accesses required by this agreement. The Owner agrees to construct only in accordance with the approved phasing scheme and further agrees to landscape all undeveloped portions of the site to the satisfaction of the City.

7.
Bicycle
Path

The Owner agrees to provide cash-in-lieu of constructing a bicycle path along the Hurontario Street frontage of the lands.

8.
Roof
Treatment

The Owner shall architecturally treat all mechanical units and ventilation systems to be installed on the roof of a building so that they are screened from view of persons on abutting highways or abutting residential projects.

9.
Waste
Disposal
Facilities

The Owner agrees that garbage and refuse storage for any restaurant on the lands shall be enclosed in a climate controlled area within a building. The Owner further agrees that garbage and refuse storage for any other use other than a restaurant, including containers for recyclable materials, shall be contained within a building.

10.
Construction
Access

The Owner agrees to establish a construction access to the site at a location satisfactory to the Commissioner of Public Works and Building.

CITY CAPITAL CONTRIBUTIONS

Capital
Contri-
butions

The Owner covenants and agrees to unconditionally pay to the City without protest or qualification and prior to the issuance of any building permits for the lands by the City, and subject to adjustment as herein provided, a capital contribution of **Five Thousand, Five Hundred and Twenty-one Dollars and Seventy-nine Cents (\$5,521.79)** as of **August 1, 1989** (Base Rate February 1, 1989 \$5,240.26) per acre for the total acreage of the lands which is 8.034 acres.

2. In the event the total floor area of all the buildings proposed to be constructed on the lands exceeds fifty per cent (50%) of the total area of the lands, the Owner shall unconditionally pay to the City, without protest or qualification an additional capital contribution of \$0.2535 Dollars as of August 1, 1989 (Base Rate February 1, 1989 \$0.2406) per square foot for each square foot of the total floor area of all of the proposed buildings in excess of fifty per cent (50%) of the total area of the lands. This additional capital contribution shall be paid prior to the issuance of the building permit for the building or buildings which either by themselves or together with existing buildings on the lands, have a total floor area which exceeds fifty per cent (50%) of the total area of the lands.

3. These capital contributions are effective the 25th day of SEPTEMBER, 1989, and shall be adjusted twice yearly on the 1st days of February and August in each year in direct relationship to the Southam Construction Index (Ontario Series). This adjustment will be based on the Index last available prior to the 1st days of February and August respectively in each year.

SCHEDULE F

REGION INDUSTRIAL AND COMMERCIAL LOT LEVY

1.1 The Owner covenants and agrees to unconditionally pay to the Region without protest or qualification and prior to the issuance of any building permits for the lands by the City, and subject to adjustment as herein provided, a lot levy of **Fifteen Thousand, Five Hundred and Ninety-one Dollars and Fifty-five Cents (\$15,591.55)** (August 1, 1989, Base) per acre for the total acreage of the lands which 8.034 acres.

2. In the event the total floor area of all the buildings proposed to be constructed on any lot within the plan, exceeds fifty per cent (50%) of the total lot area, the Owner shall unconditionally pay to the Region, without protest or qualification an additional lot levy of \$0.7158 Dollars (August 1, 1989 Base) per square foot for each square foot of the total floor area of the proposed buildings in excess of fifty percent (50%) of the total lot area. This additional lot levy shall be paid prior to the issuance of the building permit for the building or buildings which either by themselves or together with the existing buildings on the lot, have a total floor area which exceeds fifty per cent (50%) of the total lot area. For the purposes of this paragraph "lot" shall mean a lot as defined by the applicable zoning by-law.

3. These lot levies are effective the 1st day of AUGUST, 1989, and shall be adjusted twice yearly on the 1st days of February and August in each year in direct relationship to the Southam Construction Index (Ontario Series). This adjustment will be based on the Index last available prior to the 1st days of February and August respectively in each year.

4. Region industrial and commercial lot levies are subject to reduction provisions:

4.1 in the amount of \$2,842.21 per acre or \$0.1305 per square foot (August 1, 1989 base) for Sanitary Sewers when the development is outside the designated South Peel service area. This amount will be adjusted in accordance with paragraph 3.

4.2 in the amount of \$2,754.87 per acre or \$0.1265 persquare foot (August 1, 1989 base) for water when the development is outside the designated South Peel service area. This amount will be adjusted in accordance with the paragraph 3.