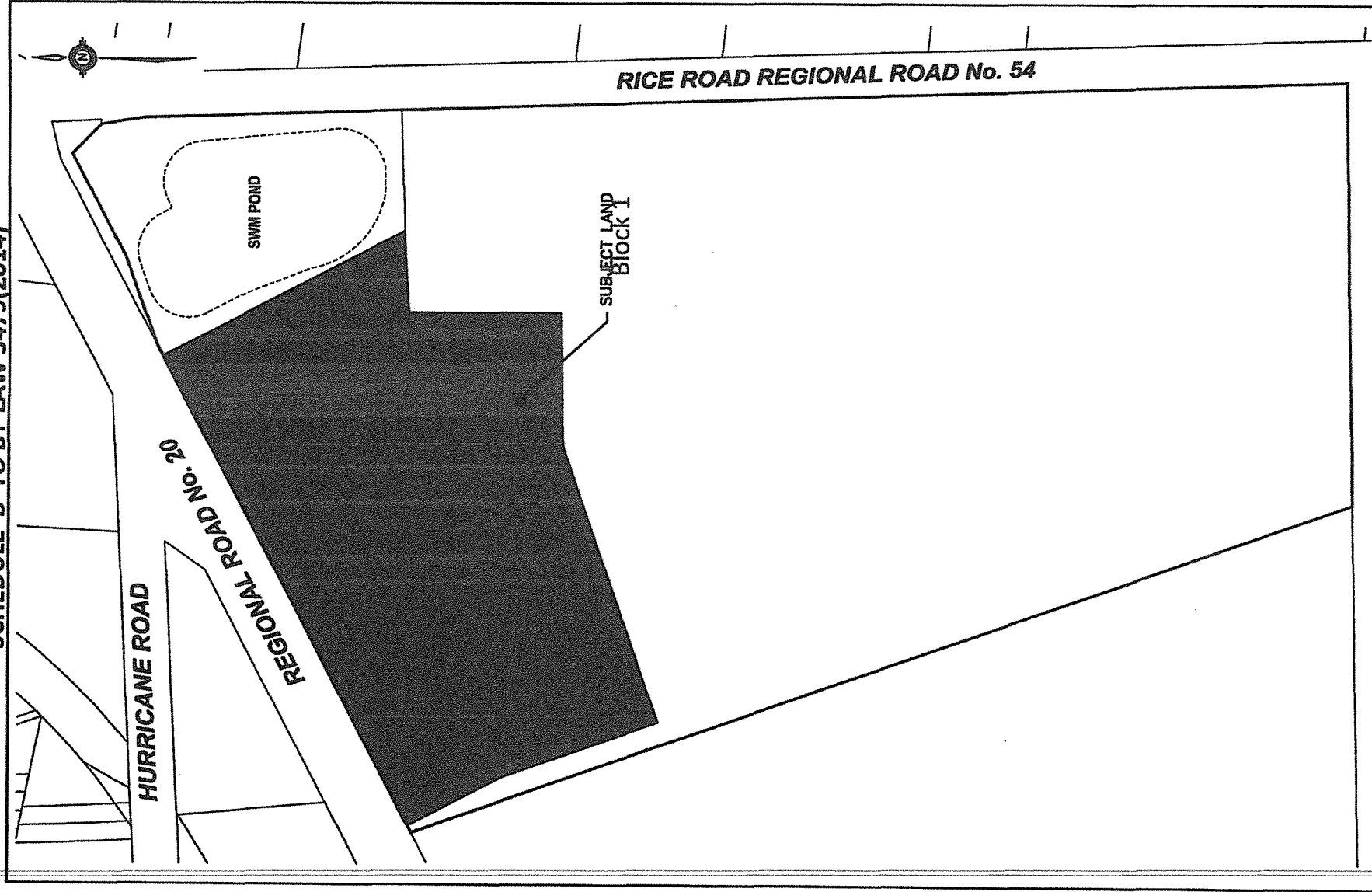


**SCHEDULE A**  
**To By-law #3479(2014)**

**Property Description:**

Part of Township Lots 161 and 166, Thorold & Part of the Road Allowance between Lots 161 & 166, Thorold (stopped up and closed by RO196052), being Part 1 on Reference Plan 59R-12687, except Part 7 on Reference Plan 59R-14225, subject to an Easement in Gross over Part of Road Allowance between Thorold Township Lots 161 and 166, being Part 8 on Reference Plan 59R-14225, as in SN306187, Town of Pelham, PIN 64063-0240(LT), totaling 7.7 acres, being Block 1 as per the Land Exchange Plan, as depicted on Schedule "B".

SCHEDULE 'B' TO BY-LAW 3479(2014)



**PURCHASE OPTION AND COST SHARING AGREEMENT**

**BETWEEN:**

**THE CORPORATION OF THE TOWN OF PELHAM**  
(hereinafter referred to as the "Town")

and

**FONTHILL GARDENS INC.**  
(hereinafter referred to as the "Fonthill Gardens")

**WHEREAS:**

The Town is the registered owner of the lands described in Schedule "A" attached hereto (the "Town Lands");

Fonthill Gardens is the registered owner of the lands described in Schedule "B" attached hereto (the "Fonthill Gardens Lands");

The Town and Fonthill Gardens have determined that the coordinated servicing and development of the Town Lands and Fonthill Gardens Lands is in the best interests of both parties and will result in a net benefit to the Town;

The Town has determined that a portion of the Town Lands are surplus to the needs of the Town and are therefore available for disposition;

The Town has determined that an exchange of lands with Fonthill Gardens to permit the development by Fonthill Gardens of a medical centre and a retirement residence and associated or complementary uses, and other uses as may be permitted by the Town on a portion of the Town will result in a net benefit to the Town;

The Town and Fonthill Gardens have determined that by cooperating in the servicing of their lands will result in cost savings to both Parties and will ensure the orderly development of these lands;

The Town and Fonthill Gardens have agreed that the development of the Town Lands and Fonthill Gardens Lands, the purchase options, cost sharing with respect to servicing costs and governance shall be governed by this agreement (the "Agreement");

The Town and Fonthill Gardens acknowledge and confirm their mutual intention to implement the terms of this Agreement by applying principles of cooperation and sharing in order to optimize the financial and social benefits which may accrue to each of them and to the Pelham community through the development of the Town Lands and Fonthill Gardens Lands as contemplated by this Agreement.

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of the sum of Two Dollars (\$2.00) of lawful money of Canada now paid by each of the Parties hereto to the other and in

consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Town and Fonthill Gardens do hereby covenant and agree as follows:

## **1. DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions**

For all purposes of this Agreement and any amendments hereto, and any other documents entered into by the Parties in accordance with the provisions hereof, the terms defined in this section shall have the following meanings, unless the context expressly or by implication otherwise requires, namely:

**“Agreement”, “this Agreement”, “hereto”, “hereof”, “herein”, “hereby”, “hereunder”** and similar expressions mean and refer to this Agreement, all Schedules referred to in this Agreement, all amendments to this Agreement executed in writing by both Parties.

**“Fonthill Gardens”** means Fonthill Gardens Inc.

**“Fonthill Gardens Lands”** means the lands described in Schedule “B” to this Agreement.

**“Business Day”** means a day other than a Saturday, Sunday or any other day which is a holiday under section 88 of the *Legislation Act, 2006*, S.O. 2006, c.21, Sched. F.

**“Cost Sharing Schedule”** means Schedule “D” to this Agreement.

**“Council”** means the Council of the Corporation of the Town of Pelham.

**“Development Applications”** means amendments to the East Fonthill Secondary Plan, zoning by-law, draft plan of subdivision and site plan applications.

**“Development Agreements”** means commercial development agreements, subdivision agreements and site plan agreements or any other agreement that a Party is required to enter into with the Region or Town as a result of the Development Applications.

**“Event of Default”** means the occurrence of any of the following events:

- (a) If any Party fails to make any payment required to be made by this Agreement from time to time within thirty (30) Business Days after such payment is due or on any other negotiated terms;
- (b) If any Party fails in any material respect to observe, perform, or comply with any agreement, condition or obligation required by this Agreement, and such failure continues for a period which is the shorter of:
  - (i) Thirty (30) Business Days after notice of such failure and the demand for observance, performance or compliance shall be given by any other Party, or
  - (ii) Such other grace period, if any, as is specifically applicable thereto as set out in this Agreement,

provided however, that if the nature of such failure is such that it cannot be rectified or remedied by the payment of money or cannot be rectified or remedied within a period of thirty (30) Business Days or such shorter grace period as referred to above, if any, as the case may be, such Party shall have such additional time as is necessary as long as the curing of such default is begun promptly and proceeds and continues with due diligence to completion.

**"Land Exchange Plan"** means the plan attached as Schedule **"C"** to this Agreement which identifies the location of the Town Lands and Fonthill Gardens Lands.

**"Parcel"** means the portion of the Town Lands and Fonthill Gardens Lands identified by letters 1 to 11 inclusive on the Site Servicing Plan attached as Schedule **"E"**. The shape and size of the parcels shown on Schedule **"E"** is diagrammatic only and such Parcels may be revised with the agreement of both Parties.

**"Party"** or **"Parties"** means the Town or Fonthill Gardens or both of them.

**"Phase 1"** means the development of the parcels of Town Lands and Fonthill Gardens Lands identified on Schedule **"C"** to this Agreement.

**"Services"** means the storm sewer, storm water management pond, sanitary sewer, water lines, roads, sidewalks, electrical distribution system and street lighting and any other services that may be required by the Town for the development of the Town Lands and Fonthill Gardens Lands.

**"Town"** means the Corporation of the Town of Pelham.

**"Town Lands"** means the lands described in Schedule **"A"** to this Agreement.

## **1.2 Interpretation**

The Parties agree as follows:

- (a) The part numbers and headings, subheadings and sections, subsection, clause and paragraph numbers are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- (b) The division of this Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- (c) The terms "this Agreement", "hereof", "hereunder" and similar expressions refer to this Agreement and not to any particular section or other portion hereof and include any agreement or instrument supplement or ancillary hereto;
- (d) This Agreement shall be construed with all changes in number and gender as may be required by the context and words importing persons shall include individuals, partnerships, associations, trusts, unincorporated organizations and corporations and *vice versa*;

- (e) References herein to any statute or any provision thereof include such statute or provision thereof as amended, revised, re-enacted and/or consolidated from time to time and any successor statute thereto;
- (f) All obligations herein contained, although not expressed to be covenants, shall be deemed to be covenants;
- (g) Whenever a statement or provision in this Agreement is followed by words denoting inclusion or example and then a list of or reference to specific items, such list or reference shall not be read so as to limit the generality of that statement or provision, even if words such as “without limiting the generality of the foregoing” do not precede such list or reference; and
- (h) That all covenants and conditions contained in this Agreement shall be severable, and that should any covenant or condition in this Agreement be declared invalid or unenforceable by a court of competent jurisdiction, the remaining covenants and conditions and the remainder of the Agreement shall remain valid and not terminate thereby.

**1.3 Schedules**

The following are the Schedules annexed hereto and incorporated by reference and deemed to be a part hereof:

Schedule “A”	Legal Description of the Town Lands
Schedule “B”	Legal Description of Fonthill Gardens Lands
Schedule “C”	Land Exchange Plan
Schedule “D”	Cost Sharing Formulas
Schedule “E”	Site Servicing Plan
Schedule “F”	Tender Process

**2. AGREEMENT TERM AND TERMINATION**

**2.1 Commencement of Agreement**

The Parties agree that the term of this Agreement shall commence upon its execution by the Parties following the passage of a by-law by Town Council authorizing its execution.

**2.2 Term of Agreement**

The Parties agree that this Agreement shall be for a term of five (5) years, from the date of execution of this Agreement by both Parties, unless otherwise terminated in accordance with the terms of this Agreement.

## **2.3 Termination of Agreement**

The Parties agree as follows:

- (a) During the term of this Agreement, except in the case of termination due to default, the respective rights and obligations of the Parties under this Agreement may only be terminated by a written consent executed by both Parties.
- (b) Notwithstanding the termination of this Agreement, the rights and obligations of the Parties for matters undertaken prior to the termination of the Agreement continue until such time as the obligations have been satisfied.

## **3. DEVELOPMENT APPLICATIONS**

### **3.1 Submission of Development Applications**

The Town and Fonthill Gardens agree that all Development Applications required for the development of those portions of the Town Lands and Fonthill Gardens Lands comprising Phase 1 shall be prepared and submitted by Upper Canada Consultants ("UCC"). The Town agrees that it shall pass a resolution pursuant to Section 3 of the Town's Policy P303-00 Purchasing Policy – Procurement of Supplies and Services to authorize the retainer of UCC in this regard.

### **3.2 Development Proposal for the Town Lands and Fonthill Gardens Lands**

The Town and Fonthill Gardens agree that the Development Applications submitted for Phase 1 shall seek approval to allow for the development of these parcels shall include following uses:

Parcel 1 - Medical Centre, Retirement Residence fronting on Regional Road 20, and associated or complementary uses, and any uses approved by the Town

Parcel 2 - Residential and any municipal use approved in accordance with the terms of this Agreement

Fonthill Gardens acknowledges that any associated or complimentary uses on Parcel 1 may be developed only in conjunction with the development of the medical centre and retirement residence on Parcel 1. The Town and Fonthill Gardens agree that they shall sign all authorizations, applications and consents reasonably required to authorize the submission of the Development Applications required for the approval of these uses on their lands.

### **3.3 Cost Sharing on Development Applications**

The Parties agree that the application fees payable to the Town, the Region or any other government agencies with respect to the Development Applications shall be payable by each Party with respect to lands owned by that Party prior to any conveyance contemplated herein.

The Parties agree that the fees and disbursements charged by UCC in relation to the submission and approval of the Development Applications shall be apportioned Two Thirds (2/3) to Fonthill Gardens and One Third (1/3) to the Town. The Town and Fonthill Gardens will direct

UCC to submit its account on a monthly basis to both Parties identifying work completed during the billing period and showing the amount payable by each Party.

#### **3.4 Payment of UCC Accounts**

The Parties agree that UCC accounts shall be paid within Thirty (30) days of delivery to the Parties. The Parties agree that failure to pay UCC accounts when due shall constitute an Event of Default under the terms of this Agreement.

#### **3.5 Satisfaction of Conditions of Approval in Development Applications**

The Parties agree that all costs incurred with respect to the satisfaction of conditions of the Development Applications shall be payable by each Party with respect to lands owned by that Party up to and including draft approval of the plan of subdivision.

#### **3.6 Independent Planning Consultant**

The Town agrees that it shall during the term of this Agreement retain an independent planning consultant to review all Development Applications with respect to the Town Lands and Fonthill Gardens Lands.

### **4. COST SHARING - SERVICES**

#### **4.1 Services**

The Parties agree that the Services required for the development of Phase 1 will be those specified in the approvals granted by the Town with respect to the Development Applications, which may be more particularly set out in the Development Agreements.

#### **4.2 Construction and Installation of Services**

The Parties agree that the cost of construction and installation of the services shall be apportioned between the Parties in accordance with the formulas set out in Schedule "D" attached hereto.

#### **4.3 Tender of Servicing Contracts**

The Parties agree that all contracts for the installation of Services shall be awarded through the Request for Tender process administered by UCC as set out in Schedule "F" attached hereto. The Town agrees that it shall pass a resolution retaining UCC and authorizing the use of this Request for Tender Process pursuant to the Town's Policy P303-00 Purchasing Policy – Procurement of Supplies and Services, with all contracts to be subject to the approval and signature by both Parties

#### **4.4 Payment of Servicing Contracts**

The Parties agree that UCC shall be appointed as the payment certifier with respect to all contracts for construction or installation of Services. The Parties agree to pay their portion of the cost for construction or installation of Services within Thirty (30) days of receipt of the



payment direction from UCC, or on such terms as may be negotiated. The Parties agree that failure to pay their portion of the cost for construction or installation of Services when due shall constitute an Event of Default under the terms of this Agreement.

## **5. FONTHILL GARDENS OPTION**

### **5.1 Fonthill Gardens Option to Purchase**

Subject to the provisions of this section, the Town hereby grants to Fonthill Gardens the option to purchase all or a portion of the Town Lands identified as Parcel 1 on Schedule "C" to this Agreement (the "Fonthill Gardens Option Lands"). This option to purchase may be exercised by Fonthill Gardens within one (1) year of Fonthill Gardens obtaining site plan approval for the development of the Medical Centre or the Retirement Residence on Parcel 1. Should Fonthill Gardens fail to exercise the option to purchase within this one (1) year period, the option shall expire and be null and void.

### **5.2 Exercise of Option to Purchase**

Should Fonthill Gardens elect to exercise this option to purchase all or a portion of Fonthill Gardens Option Lands, it shall provide a written notice to the Town (the "Fonthill Gardens Notice") which shall include the following:

- (a) Legal description, including Reference Plan, identifying the lands which Fonthill Gardens has elected to purchase (the "Property") and any remaining Fonthill Gardens Option Lands (the "Remnant Lands);
  - (b) Date of completion of the proposed purchase, which shall be no later than ninety (90) days from the date of Fonthill Gardens Notice;
  - (c) Date for submitting objections to title to the Town with respect to the Property, which shall be no later than sixty (60) days from the date of Fonthill Gardens Notice;
  - (d) Purchase price of the Property;
  - (e) Statement as to the proposed use(s) of the Property; and
- Standard OREA Form Agreement of Purchase and Sale for the Property executed by Fonthill Gardens containing the terms set out in Fonthill Gardens Notice having an irrevocable date of not less than thirty (30) days. The Agreement of Purchase and Sale shall contain a provision which allows the Town to reacquire the Property from Fonthill Gardens for the same purchase price paid by Fonthill Gardens to the Town should Fonthill Gardens not proceed with the development of the Property for the proposed use(s) set out in Fonthill Gardens Notice, as detailed in section 5.3 below.

### **5.3 Town Option to Reacquire the Property**

Fonthill Gardens acknowledges and agrees that the Town has granted this option to purchase for the express purpose of having the Property developed by Fonthill Gardens for a medical centre and a retirement residence, and associated or complementary uses, **and such other uses to which the Town specifically grants its prior consent.** Should Fonthill Gardens or

subsequent purchasers submit development applications for uses other than these, without the prior written approval of the Town, the Town shall have the option of requiring that the Property be transferred back to the Town by Fonthill Gardens for the same purchase price paid by Fonthill Gardens to the Town. The Town shall be entitled to register a notice of this interest in the Property on title upon the completion of the transfer of title to Property to Fonthill Gardens. This provision of this Agreement shall survive the completion of the transfer of title to the Property to Fonthill Gardens for a period of five (5) years.

**5.4 Purchase Price**

The purchase price for the Property shall be the sum of the following:

- (a) The number of acres of the Property based upon a surveyor’s certificate multiplied by the appraised value of \$375,000.00 per acre;
- (b) All costs incurred by the Town for the construction and installation of Services for the Property in accordance with the provisions of this Agreement as certified by UCC;
- (c) All reasonable costs incurred by the Town with respect to the disposal of the Property, including survey, legal fees and advertising; and
- (d) All development application fees and costs incurred by the Town to satisfy conditions of development approval for the Property as certified by UCC.

**5.5 Remnant Lands**

The Town shall not be required to accept Fonthill Gardens Notice or complete the transfer of the Property to Fonthill Gardens should the Town determine, in its sole discretion acting reasonably, that the Remnant Lands are of an area or dimension as to render them unsuitable for development. The Town shall advise Fonthill Gardens in writing within thirty (30) days from the date of receipt by the Town of Fonthill Gardens Notice of its decision to accept or reject Fonthill Gardens Notice on the basis of this provision.

**5.6 Sale of Fonthill Gardens Option Lands to Third Party**

In order to avoid duplication of payment of Land Transfer Tax, Fonthill Gardens may direct any conveyance in fulfillment of this option to a purchaser other than Fonthill Gardens provided that all terms and conditions of this Agreement with respect to the conveyance are fulfilled and provided that the purchaser sign an acknowledgement satisfactory to the Town regarding the Town’s right to re-purchase the Property pursuant to Section 5.3 of this Agreement.

**6. TOWN OPTION**

**6.1 Town Option to Purchase**

Subject to the provisions of this section, Fonthill Gardens hereby grants to the Town the option to purchase all or a portion of Fonthill Gardens Lands identified as Parcel 8 as shown on

Schedule "C" to this agreement (the "Town Option Lands"). This option to purchase may be exercised by the Town within one (1) year of the Town obtaining zoning approval for the development of Parcel 1. Should the Town fail to exercise the option to purchase within this one (1) year period, the option shall expire and be null and void. The Town acknowledges and agrees that the Town Option Lands shall not be used for a medical centre or a retirement residence. The Town further acknowledges and agrees that the exercise of this option to purchase is limited to the acquisition of the Town Option Lands for municipal purposes only. The Town shall advise Fonthill Gardens at the time of exercise of the option to purchase as to the intended use of the Town Option Lands. Should Fonthill Gardens determine, acting reasonably, that the proposed use is not for a municipal purpose which is compatible with the approved adjoining uses on the Fonthill Gardens Lands, Fonthill Gardens shall advise the Town in writing within thirty (30) days from the date of receipt by Fonthill Gardens of the Town Notice of its exercise of the option to purchase of its decision to accept or reject the Town Notice on the basis of this provision. For certainty, the decision of Fonthill Gardens in this regard is subject to the Dispute Resolution provisions of this Agreement.

### **Exercise of Option to Purchase**

Should the Town elect to exercise this option to purchase all or a portion of the Town Option Lands, it shall provide a written notice to Fonthill Gardens (the "Town Notice") which shall include the following:

- (a) Legal description, including Reference Plan, identifying the lands which the Town has elected to purchase (the "Property") and any remaining Town Option Lands (the "Remnant Lands");
- (b) Date of completion of the proposed purchase, which shall be no later than ninety (90) days from the date of the Town Notice;
- (c) Date for submitting objections to title to the Town with respect to the Property, which shall be no later than sixty (60) days from the date of the Town Notice;
- (d) Purchase price of the Property;
- (e) Statement as to the proposed use(s) of the Property; and
- (f) Standard OREA Form Agreement of Purchase and Sale for the Property executed by the Town containing the terms set out in the Town Notice having an irrevocable date of not less than thirty (30) days. The Agreement of Purchase and Sale shall contain a provision which allows Fonthill Gardens to reacquire the Property from the Town for the same purchase price paid by the Town to Fonthill Gardens should the Town not proceed with the development of the Property for the proposed use(s) set out in the Town Notice.

### **6.2 Fonthill Gardens Option to Reacquire the Property**

The Town acknowledges and agrees that Fonthill Gardens has granted this Option to Purchase for the express purpose of having the Property developed by the Town for municipal purposes compatible with the uses proposed by Fonthill Gardens on Parcels 9 and 10 and such other uses as the Zoning By-law may permit. Should the Town or subsequent purchasers submit

Development Applications for uses other than these, Fonthill Gardens shall have the option of requiring that the Property be transferred back to Fonthill Gardens by the Town or by the subsequent purchaser for the same purchase price paid by the Town to Fonthill Gardens. Fonthill Gardens shall be entitled to register a notice of this interest in the Property on title upon the completion of the transfer of title to the Property to the Town.

### **6.3 Purchase Price**

The purchase price for the Property shall be the sum of the following:

- (a) The number of acres of the Property based upon a surveyor's certificate multiplied by the appraised value of \$375,000.00 per acre;
- (b) All costs incurred by Fonthill Gardens for the construction and installation of Services for the Property in accordance with the provisions of this Agreement as certified by UCC;
- (c) All reasonable costs incurred by Fonthill Gardens with respect to the disposal of the Property, including survey and legal fees; and
- (d) All development application fees and costs incurred by Fonthill Gardens to satisfy conditions of development approval for the Property as certified by UCC.

### **6.4 Remnant Lands**

Fonthill Gardens shall not be required to accept the Town Notice or complete the transfer of the Property to the Town should Fonthill Gardens determine, in its sole discretion acting reasonably, that the Remnant Lands are of an area or dimension as to render them unsuitable for development. Fonthill Gardens shall advise the Town in writing within thirty (30) days from the date of receipt by Fonthill Gardens of the Town Notice of its decision to accept or reject the Town Notice on the basis of this provision.

## **7. TOWN RIGHT OF FIRST REFUSAL**

### **7.1 Right of First Refusal for Portion of Fonthill Gardens Lands**

Subject to the provisions of this section, Fonthill Gardens hereby grants to the Town a right of first refusal with respect to that portion of Fonthill Gardens Lands identified as Parcel 8 as shown on Schedule "C" to this Agreement (the "Town ROF Lands"). This right of first refusal is granted for a two (2) year period which commences upon the expiration of the Town option to purchase the Town Option Lands

### **7.2 Exercise of Right of First Refusal**

Should Fonthill Gardens receive an offer to purchase with respect to Town ROF Lands (the "Offer") which Fonthill Gardens is prepared to accept, it shall provide a copy of the Offer to the Town. The Town shall have thirty (30) days to provide written notice to Fonthill Gardens that it is exercising its right of first refusal with respect to the Town ROF Lands described in the Offer, which notice shall include an agreement of purchase and sale signed by the Town which shall, subject to section 7.3 below, contain the same terms and conditions as the Offer, failing which

the Town shall be deemed to have declined to exercise its right of first refusal with respect to the Town ROF Lands described in the Offer only, and Fonthill Gardens shall be at liberty to complete the transaction on the terms and conditions set out in the Offer.

### **7.3 Terms and Conditions of Offer Not To Include Use of Property**

If the Town exercises its right of first refusal, the Town shall be required to accept all terms and conditions of the Offer. The Town acknowledges and agrees that the Town ROF Lands shall not be used for a medical centre or a retirement residence. The Town further acknowledges and agrees that the exercise of this right of first refusal is limited to the acquisition of the Town ROF Lands for municipal purposes only. The Town shall advise Fonthill Gardens at the time of exercise of the right of first refusal as to the intended use of the Town ROF Lands. Should Fonthill Gardens determine, acting reasonably, that the proposed use is not for a municipal purpose which is compatible with the approved adjoining uses on the Fonthill Gardens Lands, Fonthill Gardens shall advise the Town in writing within thirty (30) days from the date of receipt by Fonthill Gardens of the Town Notice of its exercise of the right of first refusal of its decision to accept or reject the Town Notice on the basis of this provision. For certainty, the decision of Fonthill Gardens in this regard is subject to the Dispute Resolution provisions of this Agreement.

## **8. INSURANCE**

### **8.1 Parties to Maintain Own Insurance Coverage**

The Town and Fonthill Gardens covenant and agree to maintain or cause to be maintained such insurance coverage in their respective names in respect of their respective lands and in a form and content as would a prudent owner, acting reasonably.

## **9. ADMINISTRATION**

### **9.1 Dispute Resolution**

The Parties agree that:

- (a) During the performance of their respective obligations under this Agreement, each of them shall make good faith efforts to resolve any disputes by negotiation. If the matter has not been resolved within sixty (60) days of a Party's written request for negotiation either Party may initiate mediation as provided for hereinafter, provided that if there is a summer or election break between meetings of Council that a further reasonable period of time shall be provided to facilitate the resolution of any disputes under this clause.
- (b) That notwithstanding the time periods provided in Subsection 10.1.(a), if any Party to a dispute requires an arbitration, the Party desiring arbitration before a single arbitrator shall give the other Party notice in writing referring the dispute to arbitration pursuant to the *Arbitration Act, 1991*, S.O. 1991, c.17. If the Party issuing the notice requiring arbitration and the other Party is unable to agree upon the arbitrator within five (5) days after the

delivery of such notice, then the appointment of the arbitrator shall be determined pursuant to the *Arbitration Act, 1991*; and

- (c) That the arbitrator’s decision shall be final and binding upon them and shall not be subject to any appeal. The arbitrator shall have authority to award costs pursuant to Section 54 of the *Arbitration Act, 1991*. Without in any way limiting the powers of the arbitrator under the *Arbitration Act, 1991*, the Parties agree that the arbitrator shall have access to the books and records relating to matter in dispute and each of the Parties shall cooperate with the arbitrator and provide all information reasonably requested by the arbitrator.

**9.2 Force Majeure**

If any Party herein is delayed or hindered in or prevented from the performance of its obligations hereunder or from compliance with any of its covenants hereunder by reason of Force Majeure, then the performance of the act or obligation or compliance with a covenant of such Party shall be excused for the period of such delay and the period for the performance of the act or obligation or compliance with the covenant shall be deemed extended for an equivalent period.

**9.3 Scope of the Agreement**

This Agreement shall not, nor shall anything in this Agreement, be construed to, constitute or create a partnership, joint venture, or agency relationship between the Parties hereto. The Parties agree that any obligation or liability agreed to, undertaken by, imposed on, or incurred by any Party in this Agreement shall, unless otherwise noted herein, be the sole responsibility, and at the sole cost, of that Party.

**9.4 Notice**

All notices required or permitted to be given by one Party to the other shall be given in writing and shall be considered to have been validly given when delivered by hand, or deposited for mailing by Canada Post, registered mail service, to the address of the Party to whom such notice is directed (as set out below), or sent by facsimile transmission or e-mail to the Party to whom such notice is directed as follows:

- |                  |  |
|------------------|--|
| (a) To the Town: | The Corporation of the Town of Pelham<br>20 Pelham Town Square<br>Fonthill, ON L0S 1E0<br>Attention:<br>Facsimile:<br>Email: |
|------------------|--|

(b) To Fonthill Gardens:

Attention:

Facsimile:

Email:

or such other address, fax number or email address of which either Party has notified the other, in writing, and such notice mailed or delivered shall be deemed good and sufficient notice under the terms of this agreement.

#### **10.5 Other Applicable Laws**

Nothing in this Agreement shall relieve Fonthill Gardens from compliance with all applicable municipal by-laws, laws, regulations, notices or other policies or laws and/or regulations established by any other governmental body that may have jurisdiction.

#### **10.6 Registration of Agreement**

The Parties hereby consent to the registration of this Agreement or a notice of it against the title to Fonthill Gardens Lands and the Town Lands.

#### **10.7 Postponement and Subordination**

Fonthill Gardens covenants and agrees, at its own expense , to obtain and register such documentation from its mortgagees/charges or encumbrancers as may be deemed necessary by the Town to postpone and subordinate their interests in Fonthill Gardens' lands and premises to the interest of the Town to the extent that this Agreement shall take effect and have priority as if it had been executed and registered prior to the execution and registration of the document or documents giving to the mortgagee/charge and/or encumbrancers their interest in Fonthill Gardens' lands and premises.

#### **10.8 Default**

If an Event of Default has occurred and is continuing in respect of a Party, and the curing of such default has not begun promptly and has not proceeded with due diligence to completion as provided by this Agreement, the other Party shall have the right, in addition to any other right to remedy available at law, to:

- (a) bring any proceedings in the nature of specific performance, injunction or other equitable remedy, it being acknowledged by each of the Parties hereto that damages at law may be an inadequate remedy for a default or breach of this Agreement;
- (b) remedy such Event of Default and be entitled upon demand to be reimbursed by the Party in default (and to bring any legal proceedings for the recovery thereof) for any monies expended to remedy any such default and any other expenses (including legal fees on a solicitor and client basis) incurred by such Party together with interest at the prime rate established by The Toronto-Dominion Bank from time to time as its

reference rate of interest for determining the interest rate charged to its customers for commercial loans in Canada;

(c) bring any proceeding at law as may be permitted in order to recover damages;

(d) bring any proceeding at law as may be permitted in order to terminate this Agreement;

#### **10.9 Separate and Non-Cumulative Rights**

The rights available to the Parties under this Agreement, under any other agreement between the Parties and at law, shall be deemed to be separate and not dependent on each other and each such right accordingly shall be construed as complete in itself and not by reference to any exercised by the Parties from time to time and no such exercise shall exhaust the rights or preclude the Parties from exercising any one or more such rights or combination thereof from time to time thereafter or simultaneously.

#### **10.10 No Waiver**

The failure of either Party to require performance by the other Party of any obligation under this Agreement at any time in no way affects its right thereafter to enforce such obligation, nor shall any such failure be taken or held to be a waiver of the performance of same or any other obligation under this Agreement at any later time.

#### **10.11 Further Assurances**

Each Party hereto shall, at all times and from time to time hereafter, and upon any reasonable written request by the other Party, make, execute, deliver or cause to be made, done, executed and delivered, all such further acts, deeds, assurances and things as may be required for more effectively implementing and carrying out the true intent and meaning of this Agreement.

#### **10.12 Non-Assignment**

This Agreement may not be assigned by either Party without the express written consent of the other Party, which consent may be arbitrarily withheld.

#### **10.13 Council's Discretion to Remain Unfettered**

Notwithstanding any other provision of this Agreement, the Parties hereto acknowledge and agree that none of the provisions of this Agreement shall have the effect of operating in any way to fetter the exercise by the Council of any of its discretionary powers, duties or authorities. Fonthill Gardens acknowledges that it will not obtain any advantageous planning or other consideration or treatment by virtue of its having entered into this Agreement or by virtue of the existence of this Agreement.



**10.14 No Challenge to Agreement**

The Parties covenant and agree with each other not to call into question or challenge, directly or indirectly, in any proceeding or action in court, or before any administrative tribunal, the Party's right to enter into and enforce this Agreement. The law of contract applies to this Agreement and the Parties are entitled to all remedies arising from it. The Parties agree that adequate consideration has flowed from each Party to the other. This provision may be pleaded by either Party in any action or proceeding as estoppel of any denial of such right.

**10.15 Governing Law**

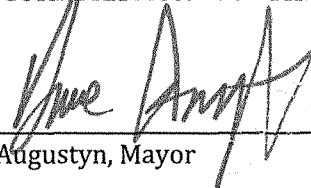
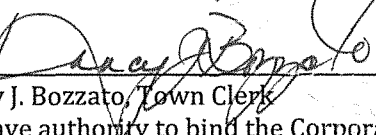

In all respects this Agreement shall be interpreted and governed in accordance with the laws of the Province of Ontario.

**10.16 Successors and Assigns**

All of the provisions of this Agreement shall run with each Party's lands and shall ensure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns, but only to the extent that such successors and permitted assigns are successors and assigns in compliance with this Agreement.

**IN WITNESS WHEREOF** the said Parties have hereunto set their respective corporate seals under the hands of their duly authorized officers

**PELHAM**

)  
) **THE CORPORATION OF THE TOWN OF**  
)  
)  
)  
) Per:   
) Dave Augustyn, Mayor  
)  
)  
) Per:   
) Nancy J. Bozzato, Town Clerk  
) We have authority to bind the Corporation  
)  
) Date: March 31, 2014  
)  
) **FONTHILL GARDENS INC.**  
)  
)  
) Per:   
)  
) Date: March 26, 2014  
)

## **SCHEDULE "A"**

### **Legal Description of the "Town Lands"**

Part of Township Lots 161 & 166, Thorold & Part of Road Allowance between Lots 161 & 166, Thorold (stopped up and closed by R0196052), being Part 1 on Reference Plan 59R-12687, except Part 7 on Reference Plan 59R-14225, subject to an Easement in Gross over Part of Road Allowance between Thorold Township Lots 161 & 166, being Part 8 on Reference Plan 59R-14225, as in SN306187, Town of Pelham

PIN 64063-0240 (LT)

**SCHEDULE "B"**

**Legal Description of the "Fonthill Gardens Lands"**

Part of Lots 166 & 167, Township of Thorold & Part of Lot 3, Plan 717, being Part 2 on Reference Plan 59R-12687, except Part 7 on Reference Plan 59R-14224, subject to an Easement in Gross over Part of Lots 166 & 167, Thorold Township, being Parts 6 & 8 on Reference Plan 59R-14224, as in SN311461, Town of Pelham

PIN 64063-0244 (LT)

SCHEDULE "C"

Land Exchange Plan



**SCHEDULE "D"**

**Cost Sharing Formulas**

**1. Sanitary Sewer, Water Lines, Street Lighting, Roads and Sidewalks**

All costs relating to design, construction and installation of these services shall be apportioned between the Parties on a frontage foot basis. Each Party shall be responsible for the servicing costs based on the frontage of the property on the proposed roads where these services are to be installed which the Party is the registered owner of at the time the sanitary sewer water lines, street lighting, roads and sidewalks are installed.

EXAMPLES (Parcels shown on Schedule "E"):

Street "B"	Fonthill Gardens	50%
	Town	50%
Road Separating Parcels 2 & 3 from Parcels 5 & 4:	Town	100%
Road Separating Parcels 9 & 10 from Parcel 8:	Fonthill Gardens	100%

**2. Storm Water Management Pond and Storm Sewers**

All costs relating to the design, construction and installation of the storm water management pond and storm sewers shall be apportioned between the Parties on the basis of the benefiting area of the property of which each Party is the registered owner of at the time these services are constructed and installed multiplied by the anticipated runoff to be generated by the benefiting properties.

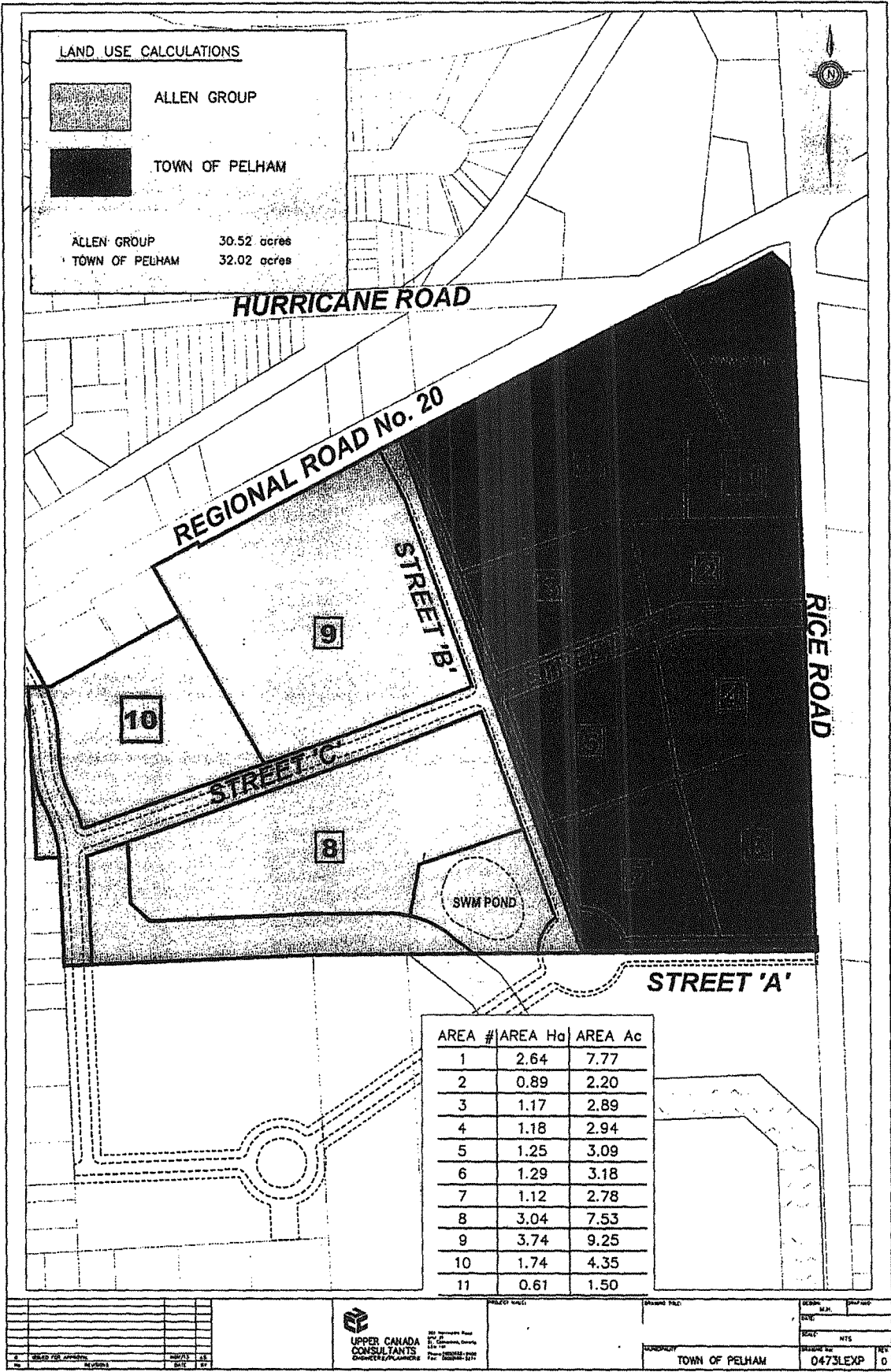
**3. Land for Storm Water Management Pond**

The Party on whose land a storm water management pond is constructed will receive compensation for land used for the storm water management pond from the other benefiting Party based on the proportionate share of the storm water management pond that is required to service that Party's land multiplied by \$375,000.00 per acre.

**4. Electrical Distribution System**

All costs relating to design, construction and installation of these services shall be apportioned between the Parties on a frontage foot basis. Each Party shall be responsible for the servicing costs based on the frontage of the property on the proposed roads where

these services are to be installed which the Party is the registered owner of at the time the sanitary sewer water lines, street lighting, roads and sidewalks are installed. In addition, each Party will be responsible for the cost of any transformers or improvements to the standard level of service resulting from the specific use proposed for that Party's land.





## **SCHEDULE "F"**

### **Request for Tender Process**

The following rules shall apply to all Requests for Tender for all contracts for the supply of Services to Phase 1:

1. All Requests for Tender are to be issued by UCC to selected contractors on an invitation to tender basis.
2. There shall be a minimum of three (3) Requests for Tender issued for each of the services tendered.
3. All bids received in response to the Request for Tender shall be opened in the presence of representatives of UCC, the Town and Fonthill Gardens.
4. UCC shall provide its recommendation as to the preferred bid to the Town and Fonthill Gardens.
5. A successful bid must have the approval of both Fonthill Gardens and Council of the Town of Pelham prior to the award of the contract.