



September 3, 2015

Via Email to [sheddenc@niagaralaw.ca](mailto:sheddenc@niagaralaw.ca)

Reply to St. Catharines Office  
**THOMAS A. RICHARDSON, C.S.**  
905.688.2207 – Direct line  
[tarichardson@sullivanmahoney.com](mailto:tarichardson@sullivanmahoney.com)

*Certified Specialist (Municipal Law – Local  
Government/Land Use Planning and Development)*

Mr. Callum Shedden  
Daniel & Partners  
Barristers & Solicitors  
P.O. Box 24022, 39 Queen Street  
St. Catharines, ON L2R 7P7

Dear Mr. Shedden:

**Re: Fonthill Gardens Inc. and the Town of Pelham  
Our File No. 95404**

Further to my letter of September 2, 2015, I enclose herewith a revised Agreement in which Fonthill Gardens Inc. and Fonthill Gardens (2015) Inc. are both parties to the Agreement. I have not amended the body of the Agreement, preferring instead to have the term "Fonthill Gardens" refer to both Fonthill Gardens Inc. and Fonthill Gardens (2015) Inc. The legal description for Schedule "A" will follow shortly.

I trust this is satisfactory.

Yours very truly,

**SULLIVAN, MAHONEY LLP**

Per:

**Thomas A. Richardson, C.S.**

TAR:sm  
Enclosure

cc—Mr. David Allen, Fonthill Gardens Inc.  
cc—Mr. Stephen Kaiser  
cc—Mr. Martin Heikoop and Ms. Jennifer Vida, Upper Canada Consultants

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4781 Portage Road, Niagara Falls, Ontario L2E 6B1 Telephone: 905-357-0500, Facsimile: 905-357-0501

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V.F. Muratori, Q.C.	P.B. Bedard	T.A. Richardson	P.M. Sheehan	W.B. McKaig	J. Dallal	D.A. Goslin
J.M. Gottli	R.B. Culliton	J.R. Bush	P.A. Mahoney	B.A. Macdonald	M.J. Bonomi	G.W. McCann
S.J. Premi	C. D'Angelo	R. Vacca	T. Wall	B.J. Troup	D.M. Willer	L.K. Parsons
J.P. Maloney	M.D. Atherton	M.W. Vanooosveen	D. Continenza	L. Scambelluri	D.A. Maloney	S. McHugh
P.A. Bush	C.L. Dilts					

Counsel (Commercial Law): M.D. Kriluck

**THIS PARKLAND DEDICATION AGREEMENT MADE** as of this 8<sup>th</sup> day of September, 2015 (the "Agreement").

**B E T W E E N :**

**THE CORPORATION OF THE TOWN OF PELHAM**

Hereinafter called the "Town"

- and -

**FONTHILL GARDENS INC. and FONTHILL GARDENS (2015) INC.**

Hereinafter called "Fonthill Gardens"

**WHEREAS:**

- A. The Town and Fonthill Gardens entered into a Purchase Option and Cost Sharing Agreement accepted on March 31, 2014, as amended by an amending agreement dated as of June \_\_, 2015 (collectively, the "Purchase Option and Cost Sharing Agreement") wherein the Town and Fonthill Gardens have agreed on various terms, conditions and conveyances relating to the development of the Town Lands and the Fonthill Garden Lands;
- B. The East Fonthill Secondary Plan Area contemplates the development of East Fonthill;
- C. The Purchase Option and Cost Sharing Agreement contemplates the development of certain lands described therein by Fonthill Gardens;
- D. The development by Fonthill Gardens will trigger a parkland dedication or cash-in-lieu payment pursuant to the *Planning Act*;
- E. Fonthill Gardens has agreed to: grant parkland to the Town in an amount that will exceed the requirements of the *Planning Act*; herein referred to as the "Excess Dedications";
- F. The Town has agreed to credit Fonthill Gardens for a dollar amount equal to the Excess Dedications (the "Credits") which may be used to satisfy the payment of any fees, costs and other amounts that may be payable to the Town as part of any development or construction in the Town, including without limiting the generality of the foregoing, any parkland dedication fees, development charges and application fees (collectively, the "Municipal Payments"), subject to the terms of this Agreement; and

- D. All capitalized terms shall have the same meaning as in the Development Agreement unless otherwise defined herein.

**IN CONSIDERATION** of the premises and other good and valuable consideration and the covenants and agreements herein contained, the parties hereto covenant and agree as follows:

1. The Town hereby agrees that Fonthill Gardens will, from time to time, be entitled to satisfy any Municipal Payments by using the Credits on a dollar for dollar basis until such time as the total Credits used to satisfy the Municipal Payments are equal to the Excess Dedications.
2. Fonthill Gardens has the right, from time to time, to assign, all or any portion of, the Credits and its rights under this Agreement to any one or more developer or builder (the "Assignees"), according to its sole, absolute and unfettered discretion. The Assignees will be entitled to use the Credits to satisfy any Municipal Payments in the same manner as Fonthill Gardens under this Agreement. Fonthill Gardens agrees to provide notice to the Town of any such assignment and to provide the particulars of the amount of the Credits that have been assigned.
3. Fonthill Gardens will enter into an agreement to convey to the Town for parkland dedication purposes the lands which are cross-hatched in Schedule "A" attached hereto (the "Municipal Lands").
4. In order to meet the Town's need to acquire the parklands early in the process, for purposes of calculating the "Excess Dedications", the Town confirms that, notwithstanding the provisions of By-law #2682 (2005), the Town will determine the value of the dedications to the Town contained in the Development Agreement by using an appraisal that values those lands as of the day before the issuance of building permits. Fonthill Gardens will: (i) prepare a draft plan depicting the Municipal Lands for purposes of the appraisal; and (ii) pay for the appraisal and will select an appraiser, subject to the approval of the Town, not to be unreasonably withheld.
5. This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.
6. Each of the parties hereto shall from time to time hereafter and upon any reasonable request of 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 or necessary to more effectually implement and carry out the true intent and meaning of this Agreement.

[next page is signature page]

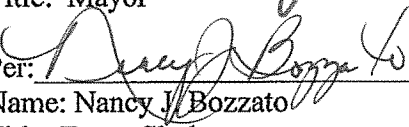
IN WITNESS WHEREOF the parties have entered into this effective as of the date first written above.

**THE CORPORATION OF THE TOWN OF  
PELHAM**

Per: 

Name: Dave Augustyn

Title: Mayor

Per: 

Name: Nancy J. Bozzato

Title: Town Clerk

We have authority to bind the Town.

**FONTHILL GARDENS INC.**

Per: 

Name: David Allen

Title:

I have authority to bind the Corporation.

**FONTHILL GARDENS (2015) INC.**

Per: 

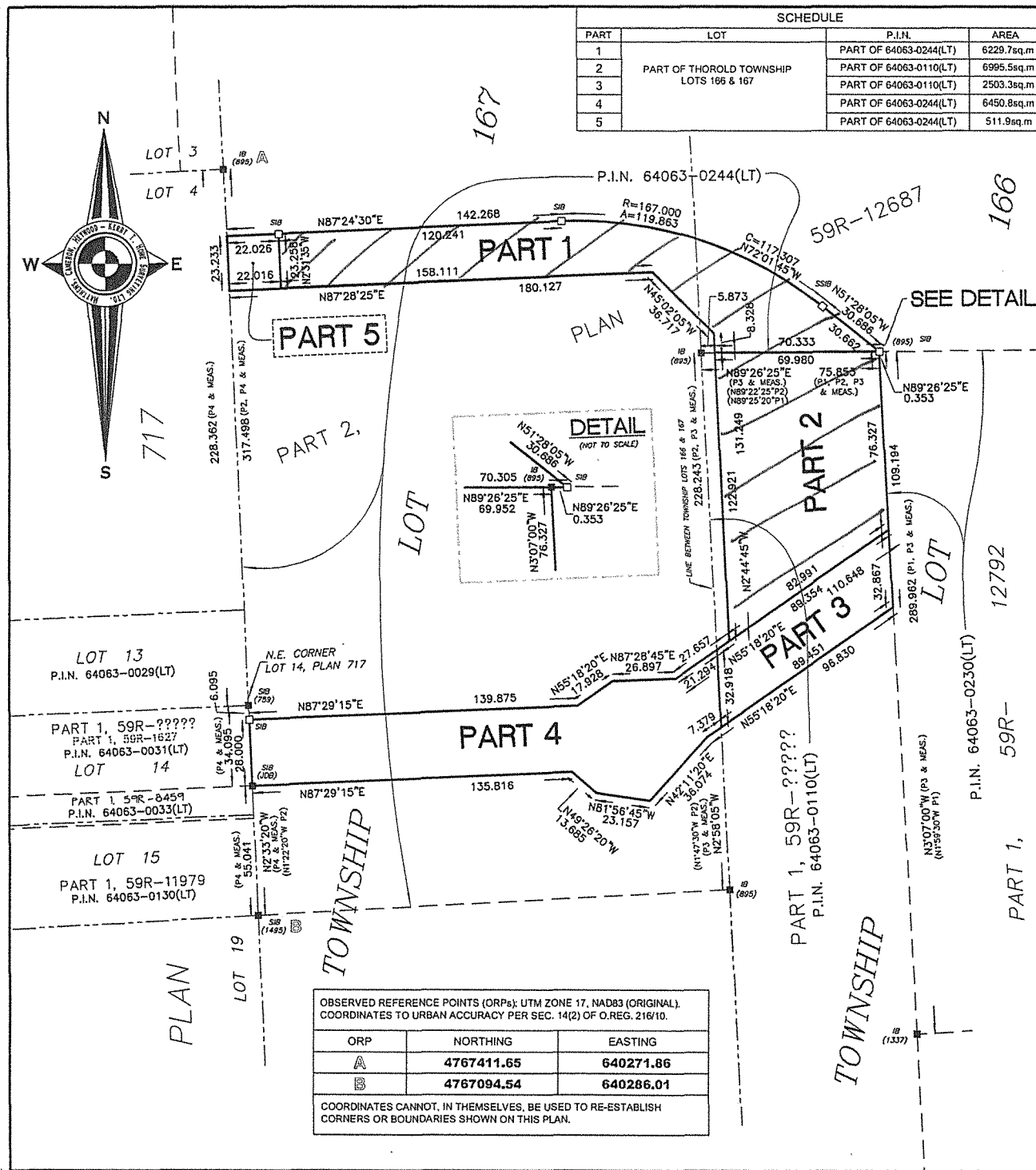
Name: David Allen

Title:

I have authority to bind the Corporation.

**SCHEDULE "A"**

[Insert Depiction of Municipal Lands]



I REQUIRE THIS PLAN TO BE  
DEPOSITED UNDER THE  
LAND TITLES ACT

PLAN 59R-

RECEIVED AND DEPOSITED

DATE

DATE

Ontario Land Surveyor

REPRESENTATIVE FOR LAND  
REGISTRAR FOR THE LAND TITLES  
DIVISION OF NIAGARA SOUTH (59)

#### METRIC NOTE

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

#### BEARING NOTE

BEARINGS SHOWN HEREON ARE GRID BEARINGS DERIVED FROM  
OBSERVED REFERENCE POINTS A AND B BY REAL-TIME NETWORK  
OBSERVATIONS (SmartNet Version 8), AND ARE REFERRED TO THE CENTRAL  
MERIDIAN 81°W OF UTM ZONE 17, NAD83 (ORIGINAL)

#### DISTANCE NOTE

DISTANCES SHOWN ON THIS PLAN ARE ADJUSTED GROUND-LEVEL  
DISTANCES AND CAN BE CONVERTED TO GRID BY MULTIPLYING BY A  
COMBINED SCALE FACTOR OF 0.99981640

#### LEGEND

denotes	SURVEY MONUMENT FOUND	(with)	denotes	WITNESS
IT	SURVEY MONUMENT SET	P1		PLAN 59R-12792
CC	IRON TUBE	P2		PLAN 59R-12687
CC	CUT CROSS	P3		PLAN 59R-77777
IB	IRON BAR	P4		PLAN 59R-77777
SIB	STANDARD IRON BAR	759		C.J. CLARKE, O.L.S.
SIB	SHORT STANDARD IRON BAR	805		D.A. LANE, O.L.S.
CM	CONCRETE MONUMENT	1337		D.G. MARR, O.L.S.
CP	CONCRETE PIN & WASHER	1495		P.D. REITSMA, O.L.S.

744 or 709 Matthews, Cameron, Heywood - Kerry T. Howe Surveying Ltd.

N = North / S = South / E = East / W = West / meas = measure

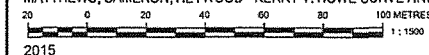
#### PLAN OF SURVEY OF

PART OF THOROLD TOWNSHIP  
LOTS 166 & 167

TOWN OF PELHAM

REGIONAL MUNICIPALITY OF NIAGARA

MATTHEWS, CAMERON, HEYWOOD - KERRY T. HOWE SURVEYING LTD.



#### SURVEYOR'S CERTIFICATE

I CERTIFY THAT:

1. THIS SURVEY AND PLAN ARE CORRECT AND IN ACCORDANCE WITH THE  
SURVEYS ACT, THE SURVEYORS ACT AND THE LAND TITLES ACT AND THE  
REGULATIONS MADE UNDER THEM.

2. THE SURVEY WAS COMPLETED ON \*

**PRELIMINARY**

DATE

Ontario Land Surveyor



MATTHEWS, CAMERON,  
HEYWOOD - KERRY T. HOWE  
SURVEYING LIMITED  
A wholly owned subsidiary of J.D. Barnes Limited

5215 STANLEY AVENUE, UNIT 1, NIAGARA FALLS, ON L2E 1C2  
Niagara Falls: (905) 356-1695 St. Catharines: (905) 687-3369 www.jdames.com

DRAWN

A.T.

CHECKED

\*

Ref. No.

15-16-049-00