

**SITE PLAN AGREEMENT** ~~Mediation Referee~~ <sup>9</sup>  
**2385746 ONTARIO INC. & THE TORONTO-DOMINION BANK** ~~UNITED~~  
**160 HIGHWAY 20 WEST**

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THIS AGREEMENT made this 7th day of November, 2016 A.D.

BETWEEN:

**2385746 ONTARIO INC.**

Hereinafter called the "Owner"

OF THE FIRST PART

- and -

~~MERIDIAN CREDIT UNION LIMITED~~  
~~THE TORONTO-DOMINION BANK~~ 

Hereinafter called the "Mortgagee"

OF THE SECOND

PART

- and -

**THE CORPORATION OF THE TOWN OF PELHAM**

Hereinafter called the "Town"

OF THE THIRD PART

**WHEREAS** the Owner represents and warrants that it is the owner of the lands in the Town of Pelham described in Schedule 'A' attached hereto (the "Lands");

**AND WHEREAS** the Owner has assumed and agreed to be bound by the terms and conditions of the Site Plan Agreement;

**AND WHEREAS** the Owner is looking forward to develop the parcel to a commercial use in accordance with Schedule 'B' attached hereto, being a Site Plan filed in the Town's offices;

**AND WHEREAS** the Town has agreed to permit the said construction subject to certain terms and conditions;

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that in consideration of the sum of One Dollar (\$1.00) now paid by the Owner to the Town (the receipt whereof is hereby acknowledged), the Parties hereto mutually covenant and agree as follows:

## **1. DEFINITIONS**

In this Agreement:

- (a) **CHIEF BUILDING OFFICIAL** shall mean the Chief Building Official of the Corporation of the Town of Pelham.
- (b) **CLERK** shall mean the Clerk of the Corporation of the Town of Pelham.
- (c) **COUNCIL** shall mean the Council of the Corporation of the Town of Pelham.
- (d) **DIRECTOR OF COMMUNITY PLANNING AND DEVELOPMENT SERVICES** shall mean the Director of Community Planning and Development Services of the Corporation of the Town of Pelham.
- (e) **DIRECTOR OF CORPORATE SERVICES** shall mean the Director of Financial Services of the Corporation of the Town of Pelham.

- (f) **DIRECTOR OF PUBLIC WORKS** shall mean the Director of Public Works of the Corporation of the Town of Pelham.
- (g) **FACILITIES AND WORKS** shall mean and includes those facilities and works which are shown on or referred to in any one or more of the plans, drawings and schedules to this Agreement.
- (h) **LANDS** shall mean the lands described in Schedule 'A' attached hereto.
- (i) **PROFESSIONAL ENGINEER** shall mean a Professional Engineer registered in good standing with the Association of Professional Engineers.

## 2. GENERAL PROVISIONS

- (a) The Owner shall develop and maintain the Lands only in accordance with the terms and conditions contained herein and any other applicable by-law of the Town.
- (b) The Owner shall perform any and all construction and installation on the Lands in accordance with the terms and conditions contained herein and as shown on Schedule 'B' attached hereto and forming part of this Agreement to the reasonable satisfaction of the Town.
- (c) The Owner shall not perform any construction or installation on the Lands except in accordance with the terms and conditions contained herein and shown on said Schedule 'B' attached hereto and forming part of this Agreement and to the reasonable satisfaction of the Town.
- (d) The Owner shall maintain and keep in good repair driveways and access servicing the buildings located in the development.
- (e) The Owner grants to the Town, its servants, agents, and assigns permission to enter upon the Lands for the purpose of inspection of any Facilities and Works referred to in this Agreement and for the purpose of the completion of any Facilities and Works in accordance with this Clause and this Agreement.
- (f) The Owner will, at all times, indemnify and save harmless the Town from all loss, costs, damages and injuries which the Town may suffer or be put to for or by reason of the construction, maintenance, or existence of any Facilities and Works done by the Owner, its contractors, servants or agents on the Lands or which the Town may suffer or be put to for or by reason of the completion by the Town of any of the required Facilities and Works in accordance with this clause and this Agreement.
- (g) The Owner shall not call into question directly or indirectly in any proceeding whatsoever in law or in equity or before any administrative tribunal the right of the Town to enter into this Agreement and to enforce each and every term, covenant, and condition herein contained and this Agreement may be pleaded as an estoppel against the Owner in any such proceeding.
- (h) The Owner dedicates a road widening (approximately 3 metres in width) to the Niagara Region across the east portion of the subject property along Highway 20 West prior to the issuance of a building permit.
- (i) The Owner agrees to obtain a certificate from an Ontario Land Surveyor stating that all existing and new survey evidence is in place at the completion of the development and provide a copy to the Niagara Region.

- (j) The Owner agrees to remove all signage indicating the property as 170 Highway 20 West as the municipal address for the property has been reassigned to be 160 Highway 20 West. The Owner agrees to provide unit numbers for each unit on the buildings for emergency response purposes.

### 3. GRADING

- (a) The Owner shall have prepared by an Ontario Land Surveyor or Professional Engineer, a detailed Plan for the site, said Plan to clearly indicate the existing drainage pattern on all adjacent Lands originally flowing through, into, or over the area of the site, to the street storm sewer system or other outlet approved by the Director of Public Works. This Plan, attached hereto as Schedule 'D', shall be approved by the Director of Public Works prior to the execution of this Agreement. Minor changes to the Plan may be permitted subject to the approval of the Director of Public Works.
- (b) The Owner shall submit, upon completion of Facilities and Works, a certificate signed by an Ontario Land Surveyor or Professional Engineer which indicates that the grades as stipulated on Schedule 'D' to this Agreement have been complied with.
- (c) Unless otherwise approved or required by the Town, the Owner shall not alter the grades of the said Lands until such time as a Building Permit is issued for the construction of the buildings contemplated herein on the said Lands.
- (d) The Owner shall provide his Design Engineer's verification that all grading, drainage, and servicing provisions have been installed in conformance with the approved Site Servicing Plan, prepared by Rankin Construction Inc., dated September 9, 2016, attached hereto as Schedule 'D'. The Owner shall provide a copy of the Design Engineer's verification to the Town.

### 4. SANITARY SYSTEM

- (a) The Owner shall at its own expense and forever maintain all necessary sanitary sewer connections necessary to serve the development; and, without limiting the generality of the foregoing, no storm, surface or roof water or weeping tiles shall be discharged into the sanitary sewer system.

### 5. WATER SUPPLY

- (a) The Owner shall, at its own expense, forever maintain all necessary connections and all internal water supply services necessary to serve the development.
- (b) The operation of valves which cause the internal water supply service to be charged from existing municipal water mains shall **ONLY** be carried out by Town Staff certified in accordance with Ontario Regulation 128/04.
- (c) The Owner shall comply with the provisions of the *Ontario Water Resources Act and Safe Drinking Water Act* and amendments thereto and all regulations thereunder, on all internal water supply services, which said act and regulations shall be enforced by the Town.

### 6. STORM SEWER SYSTEM

- (a) The Owner undertakes the installation, repair, and forever maintenance the private storm water system as identified in the Site Servicing Plan, prepared by Rankin Construction Inc., dated

September 9, 2016, attached hereto as Schedule 'D', and approved by the Director of Public Works.

## **7. ROADS AND ACCESS**

- (a) The Owner shall, at its own expense, prior to construction taking place within a Regional Road Allowance, obtain any necessary approvals from the Niagara Region Public Works Department.
- (b) The Owner shall, at its own expense, restore any curb cuts and/or reinstate with topsoil and nursery sod the boulevards within the Regional Road Allowance to Regional standards.
- (c) The Owner shall locate all private signs within the Owner's Lands. A Town Sign permit must be obtained from the By-law Enforcement Division, Department of Fire and Protection Services. A Regional Sign permit must be obtained from the Niagara Region Public Works Department.

## **8. LANDSCAPING AND TREES**

- (a) The Owner shall, at its own expense, adequately landscape, plant and maintain all of the Lands not required for buildings, parking or roads so as at all times to provide effective green areas enhancing the general appearance of the development contemplated herein, said planting and landscaping shall be in accordance with the approved Landscape Plan prepared by Forestgreen Creations Inc., dated September 9, 2016, attached hereto as Schedule 'E'. Minor changes to the Plan may be permitted subject to the approval of the Director of Community Planning and Development Services.

## **9. GARBAGE DISPOSAL**

- (b) Unless otherwise approved or required by the Town, the Owner shall not remove trees or other vegetation from the said Lands until such time as a Building Permit is issued for the construction of the buildings contemplated herein on the said Lands.
- (a) The Owner shall at all times provide adequate collection and disposal of garbage and sanitary refuse.

If it is the intention of the Owner to provide for Regional solid waste collection services within the proposed development, the Owner shall comply with the Niagara Region Waste Collections Policies.

## **10. FLOODLIGHTING**

- (a) The Owner shall ensure that any lighting facility used to illuminate any building or parking area shall be designed and installed as to deflect from adjacent buildings and streets.
- (b) The Owner shall, at its own expense, provide exterior lighting in accordance with the Plan prepared by J Hany's Engineering Inc., dated October 2016, attached hereto as Schedule 'F'. Minor changes to the Plan may be permitted subject to the approval of the Director of Community Planning and Development Services.

## **11. PARKING, CURBING, DRIVEWAYS AND SIDEWALKS**

- (a) The Owner shall, at its own expense, provide and at all times maintain on the said Lands, paved parking and driveway areas acceptable to the Town.

## 12. BUILDING AND SERVICES

The Owner shall construct and the Town shall permit the construction of the buildings and other structures on the Lands in accordance with the Schedules attached hereto to permit the development provided that all such uses shall comply with all building and zoning requirements of the Town.

## 13. PUBLIC ART

- (a) The Owner shall agree to select an artist and design for the art mural utilizing the criteria outlined in the Pelham Public Art Master Plan.
- (b) The Owner agrees that the design for the art mural will be reviewed by a Town Committee and approved by Council prior to its installation on the building in accordance with the Pelham Public Art Master Plan.
- (c) The Owner agrees to maintain the art mural in an acceptable standard to the Town. Should the art mural be damaged or require repair, the Owner agrees to remove and/or replace the art mural as soon as it becomes evident that the art mural is damaged and/ or needs to be replaced. If the art mural is replaced with a piece that was not approved by Council in (b) above, then the new piece will need to go through the approval process as outlined in (b) above.

## 14. ADMINISTRATIVE AND CONSULTING COSTS

The Owner shall pay the Town's reasonable costs in connection with this Agreement for preparation, processing, administration and supervision including, but not limited to, all administrative, legal, inspection and consulting expenses.

## 15. DEPOSIT FOR FACILITIES AND WORKS

- (a) At the time of execution of this Agreement, the Owner shall pay to the Town a deposit to guarantee its compliance with this Agreement in an amount equal to the lesser of:
  - i. 20 % of the estimated cost of completing the Facilities and Works; or
  - ii. \$60,000.00; whichever is greater.

The parties have calculated that the estimated cost for completion to be Two Hundred Thirty-Six Thousand and Thirty-Seven Dollars and Fifty Cents (**\$236 037.50**) excluding taxes as set out in Schedule 'G' attached hereto and forming part of this Agreement. Therefore, security in the amount of Forty-Seven Thousand Two Hundred Seven Dollars and Fifty Cents (**\$47 207.50**) shall be provided to the Town.

- (b) The deposit shall be paid to the Town in cash or in the form of an irrevocable letter of credit from a chartered bank or from a recognized lending institution, subject to the approval of the Director of Corporate Services and shall be held as security to ensure the completion of the Facilities and Works until such time as the Town permits its release as ordered herein. The deposit may be used to pay for the cost of any work performed by the Town in accordance with the following clause in the event of the failure of the Owners to comply with the terms of this Agreement.

- (c) Upon completion of the Facilities and Works, the Owner shall provide to the Town, at the Owner's expense, confirmation in writing by the Owner's Qualified Designer or Professional Engineer, or both, that the

approved plans appended hereto have been complied with. When such confirmation has been received, the Chief Building Official shall confirm such compliance and the deposit, less any amounts expended to enforce compliance with the Agreement and any amounts refunded or reduced as the work required by this Agreement progresses, shall be returned to the Owner, without interest.

(d) The Town may, from time to time, demand an increase in the sum of the deposit in accordance with increases in the cost of performing the Facilities and Works required herein to be completed and the Owner covenants and agrees to make such increase. At the sole discretion of the Chief Building Official the amount of the deposit may be reduced at any time after the Owner has reached the stage where the costs to complete the Facilities and Works is less than the amount of the deposit.

(e) The release of the deposit by the Town does not release the Owner from their obligation to maintain all of the Facilities and Works pursuant to this Agreement.

(f) The Owner agrees that all of the Facilities and Works required to be provided by the Owner shall be provided, installed or constructed by the Owner within one hundred and eighty (180) days after the date of substantial completion of the proposed development as determined by the Chief Building Official and shall be maintained at all times in good condition.

## **16. DEFAULT**

Upon breach by the Owner of any covenant, term, condition or requirement of this Agreement, or upon the Owner becoming insolvent or making any assignment for the benefit of creditors, the Town, at its option, may declare the Owner to be in default. Notice of such default shall be given by the Town, and if the Owner shall not remedy such default within such time as provided in the notice, the Town may declare the Owner to be in final default under this Agreement. Upon notice of default having been given, the Town may require all work by the Owner, its servants, agents, independent contractors and sub-contractors to cease (other than any work necessary to remedy such default) until such default shall have been remedied, and in the event of final default, may require all work as aforesaid, to cease. Upon final default of the Owner, the Town may, at its option, adopt or pursue any or all of the following remedies, but shall not be bound to do so:

(a) Enter upon the subject Lands by its servants, agents and contractors and complete any work, service, repair or maintenance wholly or in part required herein to be done by the Owner, and collect the cost thereof from the Owner and/or enforce any security available to it;

(b) Make any payment which ought to have been made by the Owner to the Town, for any purpose, and apply the same in payment or part payment for any work which the Town may undertake;

(c) Retain any sum of money heretofore paid by the Owner to the Town, for any purpose, and apply the same in payment or part payment for any work which the Town may undertake;

(d) Bring action to compel specific performance of all or any part of this Agreement for damages; and

(e) Exercise any other remedy granted to the Town under the terms of this Agreement or available to the Town in law.

## 17. COVENANTS

The Owner covenants for itself, its successors and assigns and the Owners from time to time of the said Lands and the burden of the covenants contained in this Agreement shall be deemed to be negative and shall run with and be binding upon the Lands to and for the Town, its successors and assigns.

## 18. REGISTRATION

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

## 19. OBLIGATION

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

## 20. BUILDING PERMIT

Notwithstanding any of the provisions of this Agreement, the Owner, its successors and assigns, shall be subject to all of the by-laws, as amended, of the Town at the time of the issuance of a Building Permit required pursuant to the terms of the Agreement or at the time of the execution of this Agreement, whichever is applicable.

The Owner shall pay parkland dedication fees at the time a building permit is issued for the Work shown on Schedule 'B'.

## 21. PLANS

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

## 22. NOTICES

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

To the Town at:

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

To the Owner at:

2385746 Ontario Inc.  
c/o 250 Canboro Road  
Ridgeville, ON L0S 1M0

To the Mortgagee at:

~~The Toronto-Dominion Bank~~ *Meridian Credit Union*  
~~31 Queen Street~~ *75 Corporate Park Drive*  
~~St. Catharines, ON L2R 6V9~~ *St. Catharines, ON*  
*L2S 3W3*

or as such other address as the party to whom such notice is to be given shall have last notified the party giving the notice in the manner provided in this Section 22. Any notice delivered to the party to whom it is addressed in this Section 22 shall be deemed to have been given and received on the day it is so delivered at such address. Any notice mailed





**SCHEDULE 'A'**

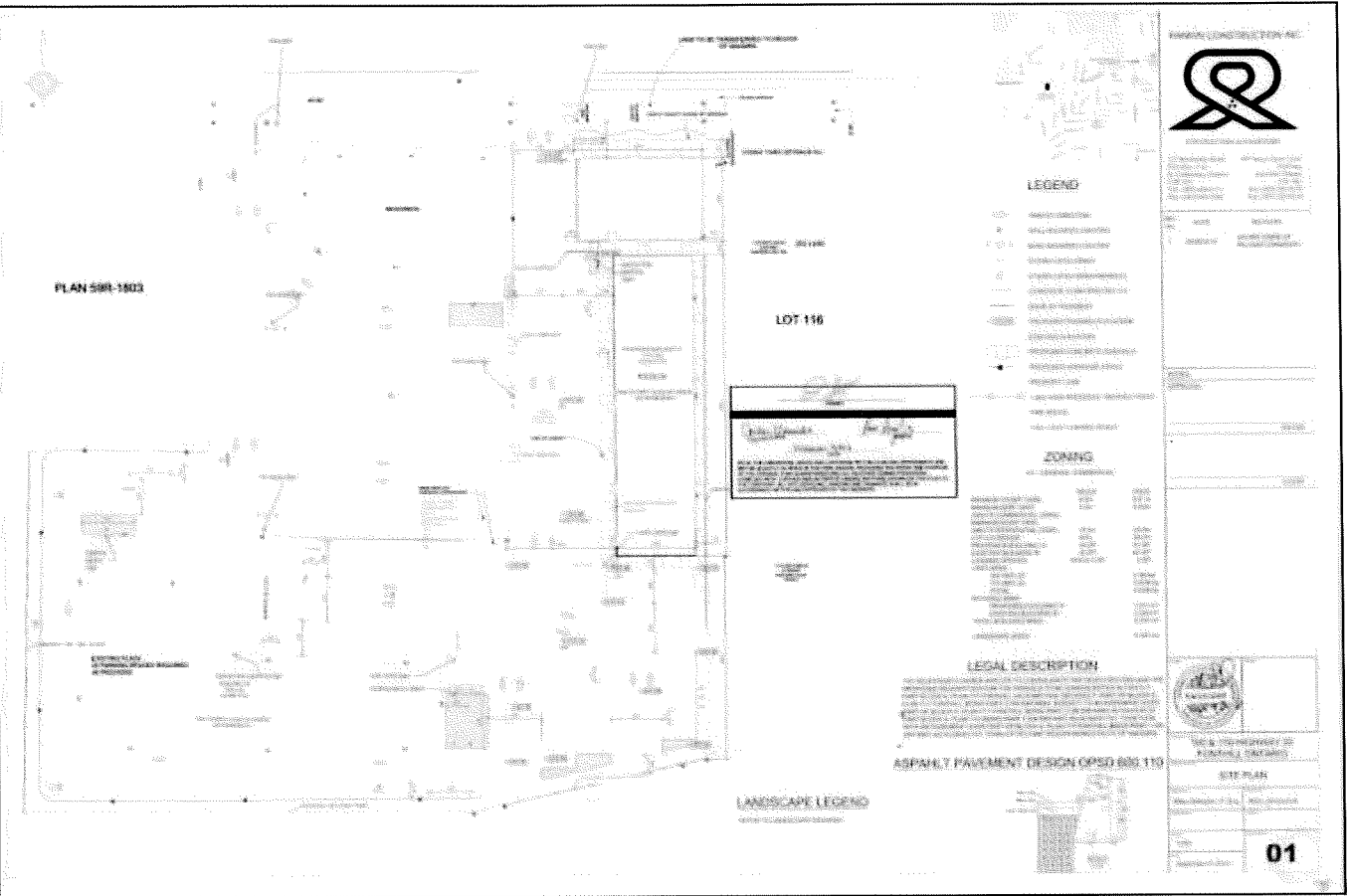
**LEGAL DESCRIPTION**

PIN 64034-0600 (LT)

Firstly: Part Block X Plan 717 Fonthill as in BB77464; Secondly: Part of Block X Plan 717 Fonthill being Part 2 on 59R14681; Subject to an Easement over Part of Block X Plan 717 Fonthill being Part 2 on 59R14681 in favour of Part of Block X Plan 717 Being Part 1 on 59R14681 as in SN351797; Together with an Easement over Part of Block X Plan 717 Being Part 1 on 59R14681 as in SN351797; save and except Part 1 on 59R-15700;TOWN OF PELHAM

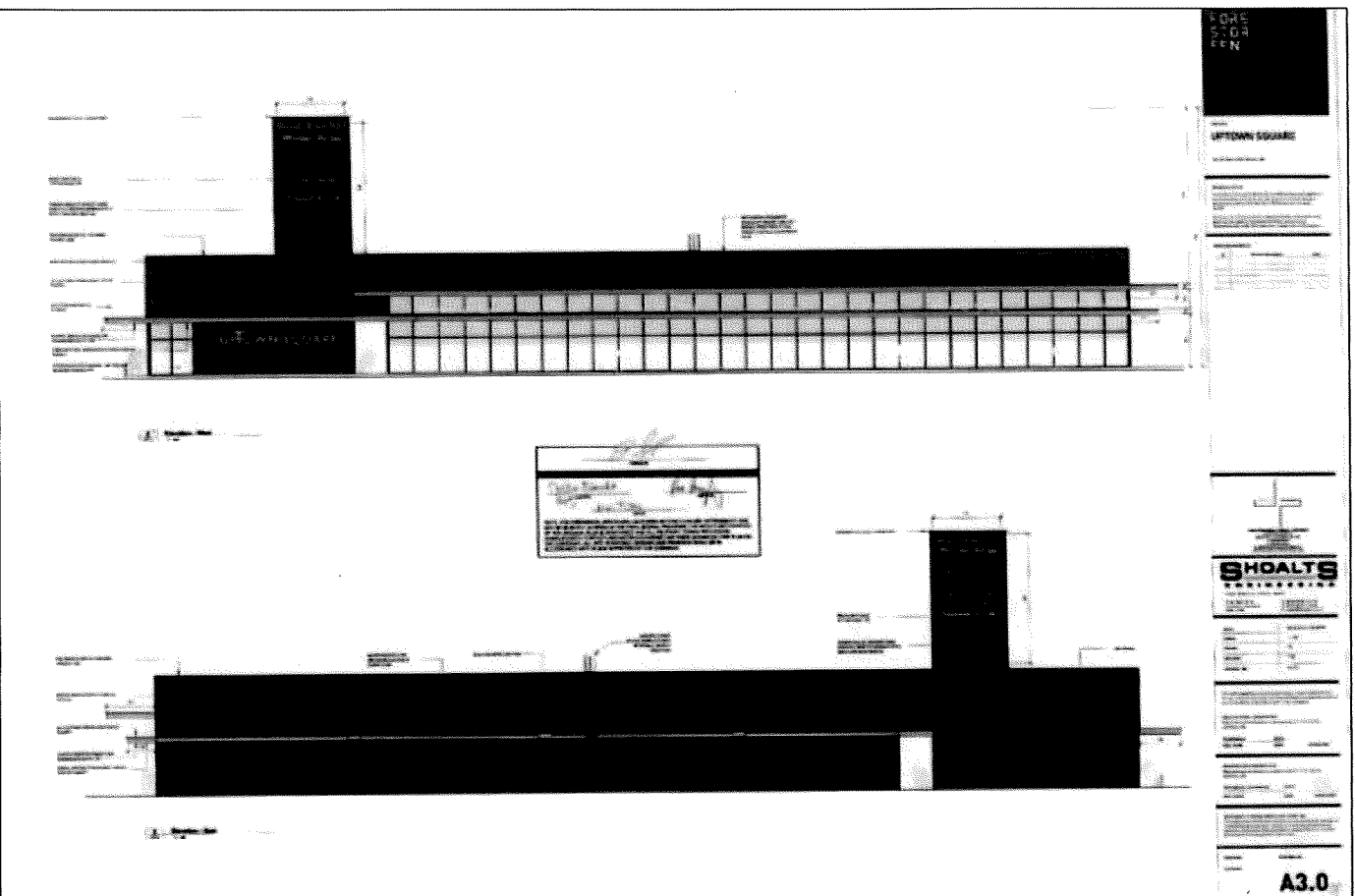
# SITE PLAN

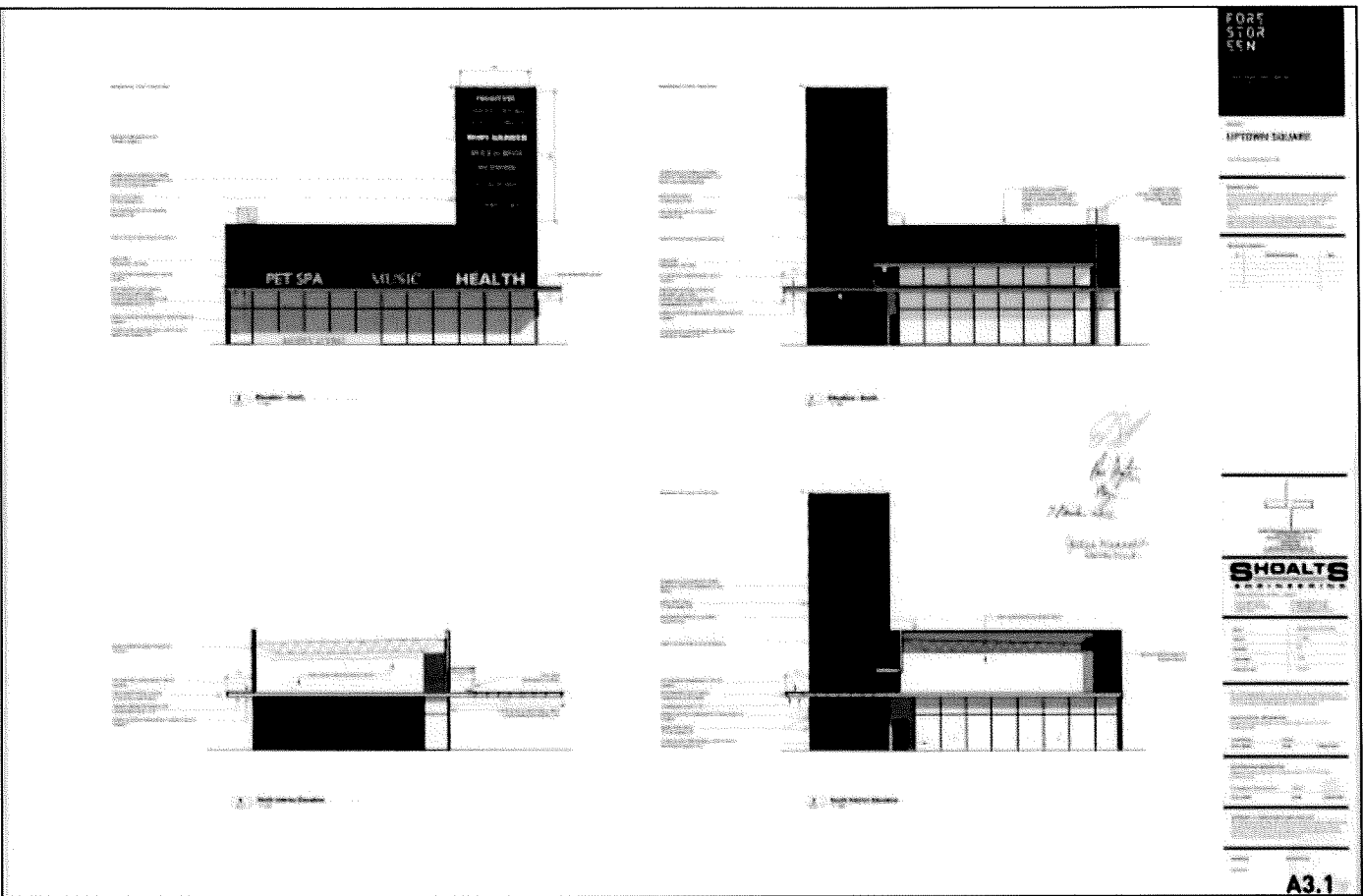
Site Plan, 01, prepared by Rankin Construction Inc., dated September 9, 2016.



# SCHEDULE 'C' ELEVATIONS

Elevations, A3.0 and A3.1, prepared by Forestgreen Creations Inc., dated September 8, 2016.

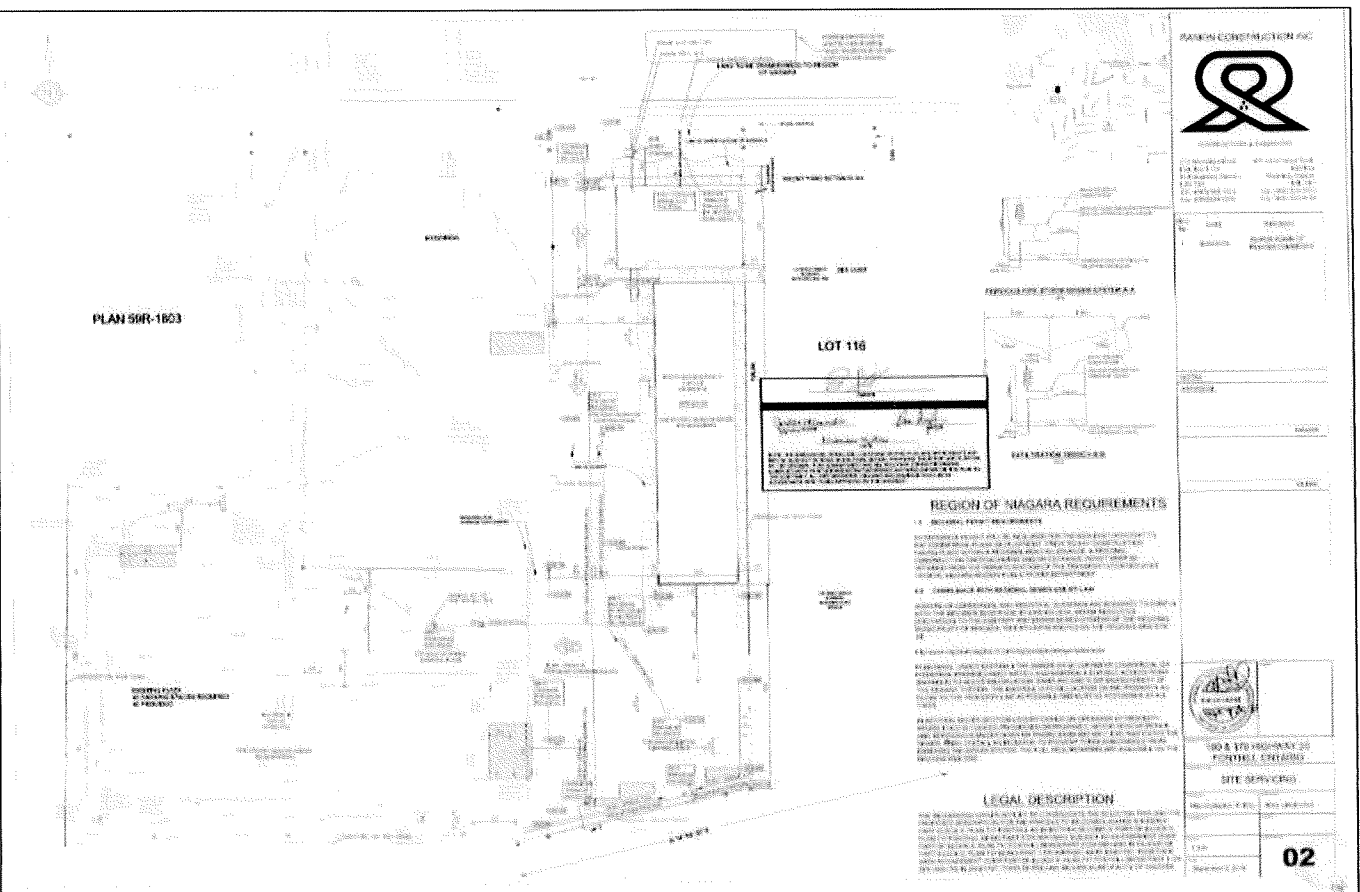




# SCHEDULE 'D'

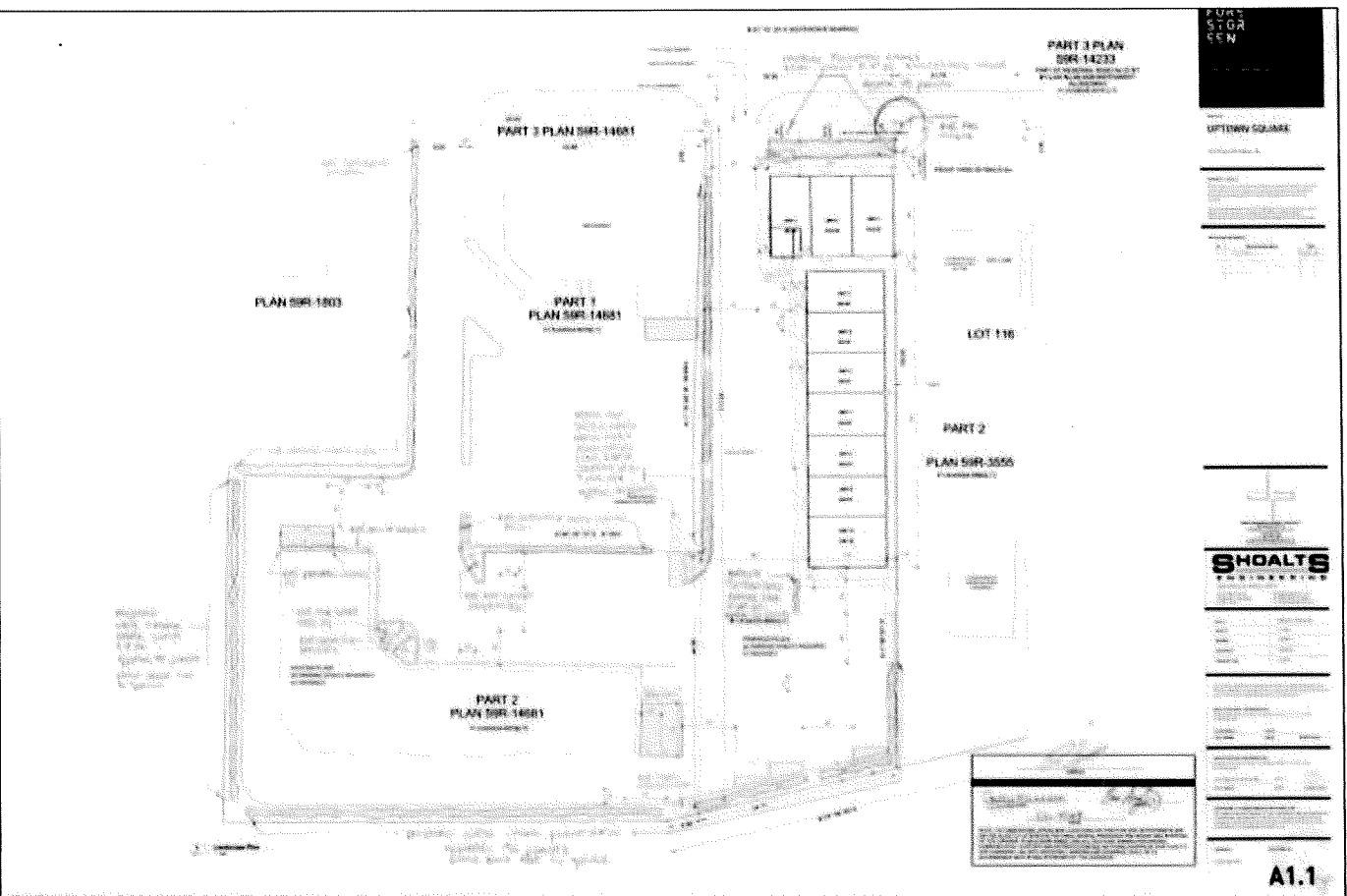
## SITE SERVICING PLAN

Site Servicing, 02, prepared by Rankin Construction Inc., dated September 9, 2016.



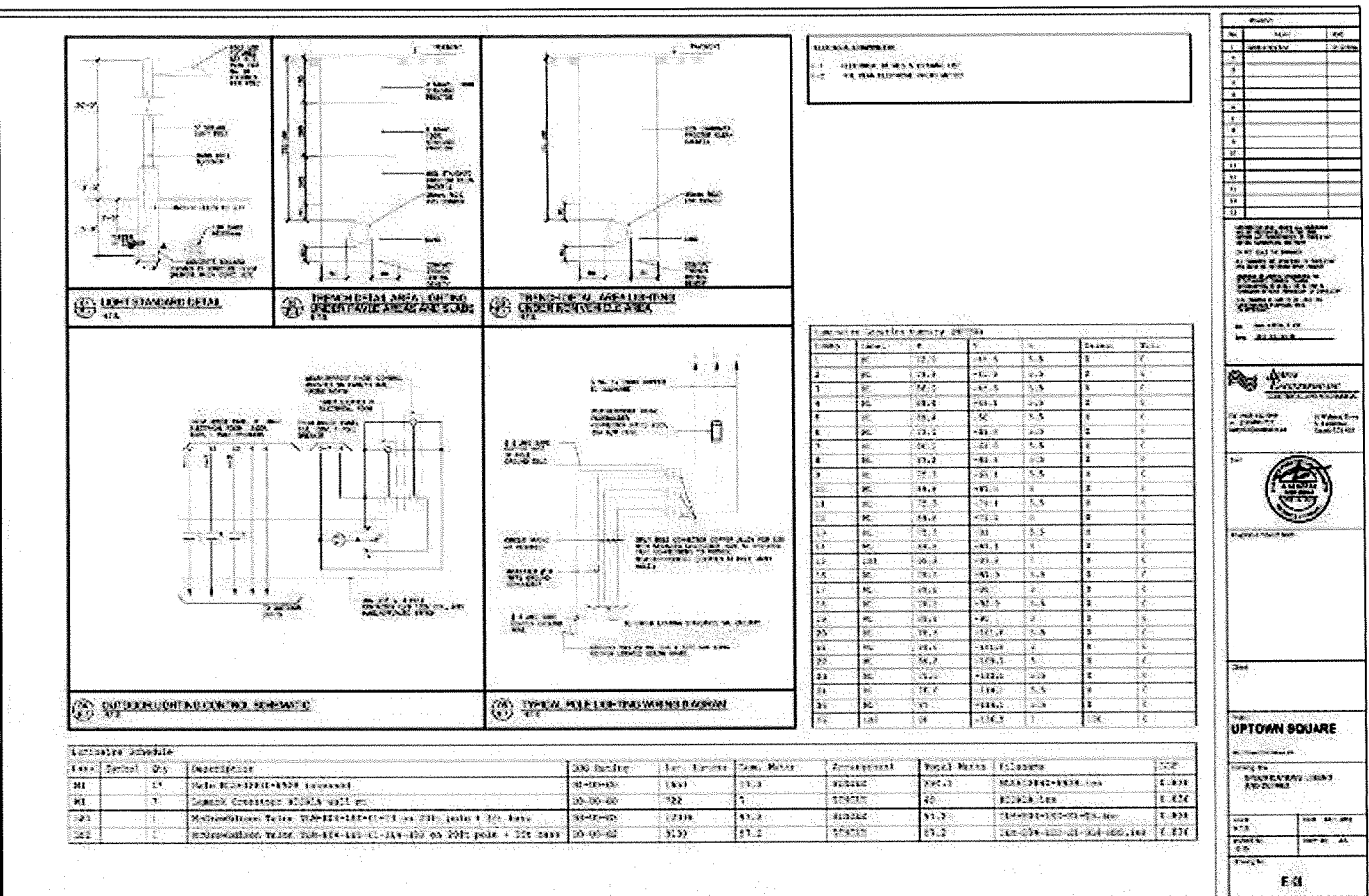
SCHEDULE 'E'  
LANDSCAPE PLAN

Landscape Plan, A1.1, prepared by Forestgreen Creations Inc., dated September 9, 2016.



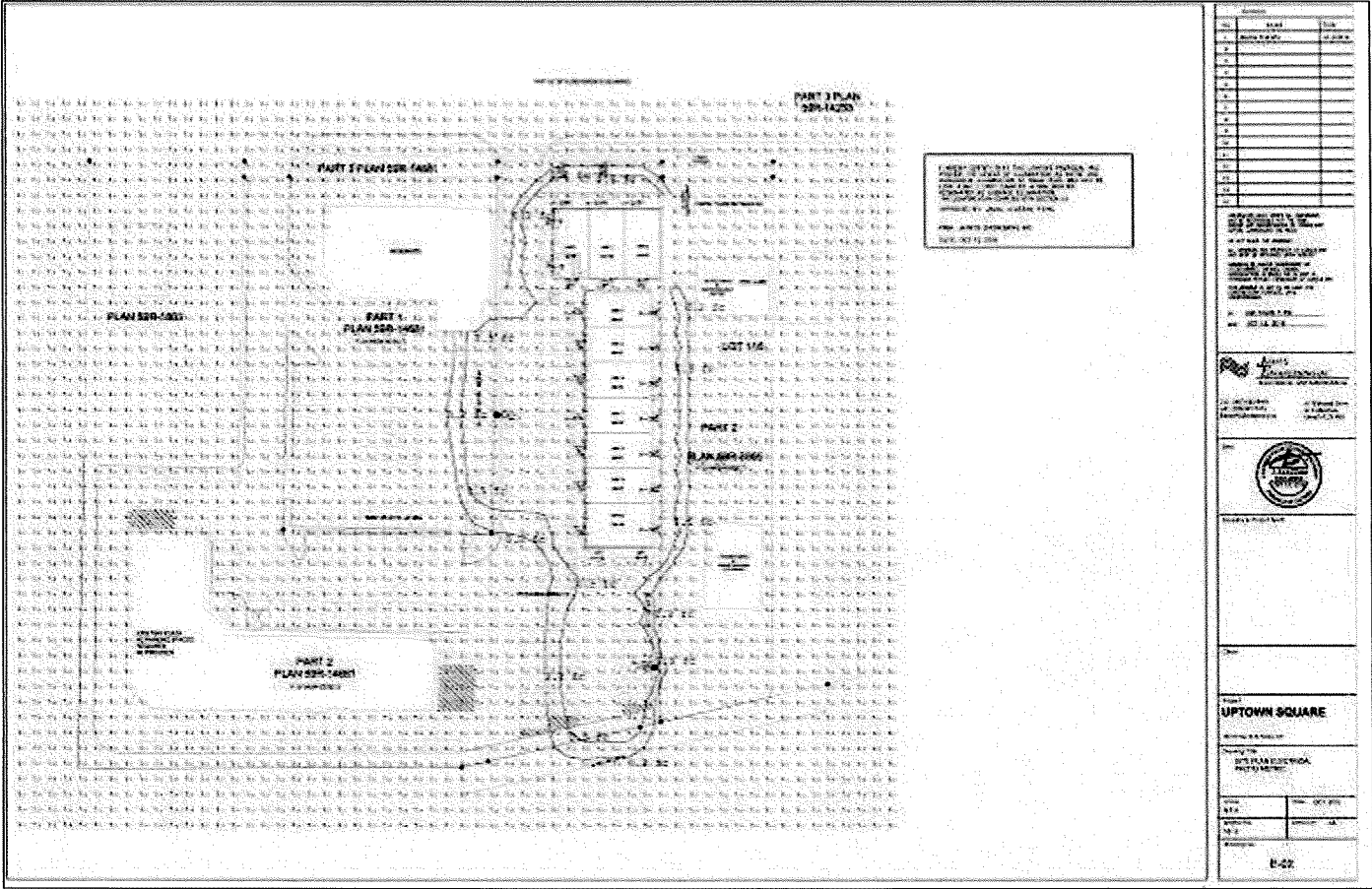
# SCHEDULE 'F' PHOTOMETRIC PLAN

Specification, Legend, and Details, E-01, prepared by J Hanys Engineering Inc., dated October 2016.





Site Plan, E-02, prepared by J Hany's Engineering Inc., dated October 2016.



SCHEDULE 'G'

COST ESTIMATES FOR FACILITIES AND WORKS

The on-site work cost estimates are as follows:

<u>Item</u>	<u>Cost Estimate</u>
<b>Site Works</b>	
Grading	\$25 000.00
Granular Material	\$23 000.00
Curbing / Sidewalks	\$32 000.00
Parking / Loading / Driveway Surface	\$38 000.00
(i.e. asphalt/other)	
Stormwater Management Facilities	\$25 000.00
(including storm sewers)	
Water and Sewer Facilities	\$32 000.00
Lighting	\$10 000.00
Garbage Facilities	\$7 500.00
Any Other Site Specific Works	\$0.00
(i.e. guardrails, retaining wall, etc.)	
<b>Landscaping</b>	
Excavation for Landscaping Purposes	\$12 750.00
Topsoil	
Seeding/Sodding	
Shrub and Groundcover Planting	
(including annuals and perennials)	
Hard Landscaping Elements	
(i.e. interlocking, stone, concrete, etc.)	
Bed Edger / Mulch	
Fencing (including noise attenuation)	
Outdoor Furnishings (i.e. play equipment,	
benches, gazebo, etc.)	
Other	
<b>Sub-Total</b>	<b>\$205 250.00</b>
Contingency and Engineering (15%)	\$30 787.50
<b>Sub-Total</b>	<b>\$236 037.50</b>
HST (13%)	\$30 684.88
<b>TOTAL</b>	<b>\$266 722.38</b>

In accordance with Section 14 (a) of this Agreement, that the estimated cost for completion shall be in the amount of Two Hundred Thirty-Six Thousand and Thirty-Seven Dollars and Fifty Cents (\$236 037.50) excluding taxes.

2005

The screenshot displays the 'Release of an Interest Partial Release of Mortgage' window in the 'Property Management' application. The window is titled 'Release of an Interest Partial Release of Mortgage' and has a 'Release' button. The main area shows a list of instruments for registration, with columns for 'Name', 'Column', 'Instrument in Progress', 'Name', 'Type', and 'Type'. The list includes four entries: 'Mortgage Deed', 'Mortgage Deed', 'Mortgage Deed', and 'Mortgage Deed'. A 'Details' dialog box is open, showing information for instrument 64034-0690. The dialog box has a title bar 'Details' and a 'Close' button. It contains the following text: 'Instrument: 64034-0690', 'Type: Mortgage Deed', 'Instrument Number: 64034-0690', 'Instrument Date: 1998-10-10', 'Instrument Status: Released', and 'Instrument Location: PLR'. There are also buttons for 'OK' and 'Cancel'.

*The applicant(s) hereby applies to the Land Registrar.*

yyyy mm dd Page 1 of 2

## Properties

PIN 64034 - 0596 LT

*Description*

PT OF BLK X PL 717 FOUNTILL, BEING PART 1, ON 59R14681; SUBJECT TO AN EASEMENT OVER PT OF BLK X PL 717 BEING PART 1 ON 59R14681 IN FAVOUR OF PT OF BLK X PL 717 BEING PART 2 ON 59R14681 AS IN SN351797. TOGETHER WITH AN EASEMENT OVER PT OF BLK X PL 717 BEING PART 2 ON 59R14681 AS IN SN351797; TOWN OF PELHAM

Address FONTHILL

P/N 64034 - 0600 LT

☒ Affects Part of Prop

Description	Area	Value
PART OF BLOCK X, PLAN 717, TOWN OF PELHAM	0.00	0.00

BEING PART 1, 59R-15700 AND BEING PART OF THE PIN

Address FONTHILL

**Document to be Discharged**

Registration No.	Date	Type of Instrument
SN345748	2012 05 16	Notice

## Discharging Party(s)

This discharge discharges the interest in the selected instrument(s).

THE CORPORATION OF THE TOWN OF PELHAM

*Address for Service*  
P. O. Box 400  
20 Pelham Town Square  
Fonthill, ON L0S 1E0

I, Dave Augustyn, Mayor and I, Nancy J. Bozzato, Town Clerk, have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

## Statements

I Callum Shedden solicitor make the following law statement There are no benefitting parties required to give their consent.

**Signed By**

## Callum Shedden

39 Queen St. P.O. Box 24022 St. Catharines L2R 7P7	acting for Applicant(s)	Signed	2016 11 24
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Tel 905-688-1125

Fax 905-688-5725

I have the authority to sign and register the document on behalf of the Applicant(s).

## Submitted By

DANIEL & PARTNERS LLP

39 Queen St. P.O. Box 24022  
St. Catharines  
L2R 7P7

Tel 905-688-1125

Fax 905-688-5725

### Fees/Taxes/Payment

Statutory Registration Fee	\$63.35
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Total Paid	\$63.35
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The applicant(s) hereby applies to the Land Registrar.

File Number

Discharging Party Client File Number :    43029