

THIS AGREEMENT MADE as of this 13th day of January, 2020 (the "Agreement").

BETWEEN:

THE CORPORATION OF THE TOWN OF PELHAM

Hereinafter called the "Town"

and

FONTHILL GARDENS INC.

Hereinafter called "Fonthill Gardens"

WHEREAS:

1. Fonthill Gardens is the developer of the lands which are described in Schedule "A" hereto annexed (hereinafter called the "Subject Lands");
2. The Town is the developer of the lands which are described in Schedule "B" hereto annexed (hereinafter called the "Town Lands");
3. Fonthill Gardens and the Town, in its capacity as Owner and as the Municipality and Approval Authority, entered into a Subdivision Agreement on September 19, 2016 which was registered on title to the Subject Lands and the Town Lands as Instrument Number SN489304 on November 4, 2016 (the "Subdivision Agreement");
4. The Subdivision Agreement includes Paragraph 3 General Provisions, (mm) which reads as follows: "prior to the registration of the subdivision plan, the owner shall enter into an Agreement with the Town for the burying of hydro service, hydro transmission lines and all other utilities along Regional Road 20 (Highway 20) to the satisfaction of the Town, and at no cost to the Town";
5. As of this date, an Agreement between Fonthill Gardens and the Town has not been entered into for the burying of hydro service, hydro transmission lines and all other utilities along Regional Road 20 (Highway 20);
6. The Subdivision Agreement prepared by the Town, Schedule "F", requires the submission of a letter of credit by Fonthill Gardens to secure the burying of hydro and

cable TV on Regional Road 20 (Highway 20) in the amount of \$713,620.43, based on Fonthill Gardens being responsible for 36.61% of these costs;

7. This Agreement is intended to address Paragraph 3 (mm) of the Subdivision Agreement.

Now THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants and agreements herein contained, the parties hereto hereby covenant and agree as follows:

- 1 Fonthill Gardens agrees that its proportionate share of all of the costs of the burying of hydro service, hydro transmission lines and all other utilities along the frontage of the Subject Lands and the Town Lands on Regional Road 20 (Highway 20) (the "Hydro Burial Project") is 30.44% in accordance with the Cost Sharing and Purchase Option Agreement executed by the Town and Fonthill Gardens.
2. The Town agrees that its proportionate share of the cost of the Hydro Burial Project is 69.66%.
3. The Town shall tender the Hydro Burial Project and shall award the tender to the successful bidder in accordance with the Town's procurement policy unless Hydro One requires the Town to follow Hydro One policy with respect to burial of Hydro One lines, in which case the Town shall comply with Hydro One procurement policies. The Town shall provide a copy of the winning tender to Fonthill Gardens. Fonthill Gardens agrees that the amount it is required to pay is 30.44% of any contract costs entered into by the Town with the third-party supplier or with Hydro One, if applicable.
4. The Town shall provide copies of the invoices received by the Town with respect to the Hydro Burial Project to Fonthill Gardens, along with an invoice from the Town to Fonthill Gardens for its proportionate share of the invoice, the proportionate share to be certified by the project engineer.
5. Upon the Town approving an invoice submitted by a contractor with respect to the Hydro Burial Project, the Town shall pay its 69.66% share and Fonthill Gardens acknowledges it is obligated to pay its 30.44% share without HST, without objection, challenge or set-off within thirty (30) days of receipt of the invoices from the Town. Failure to pay any invoice within thirty (30) days of receipt shall constitute a default of payment under the terms of this Agreement.

6. Fonthill Gardens, shall at the closing of the real estate transaction between the parties under the Agreement dated April 1, 2019, as amended, post with the Town an irrevocable letter of credit satisfactory to the Town in the amount of \$500,000.00 to secure its share of the cost of the Hydro Burial Project.
7. The Town shall be entitled to call upon the letter of credit referred to in Paragraph 6.
8. The Town shall endeavour to complete the Hydro Burial Project within five (5) years of the execution of this Agreement. In the event that this does not occur, the Town and Fonthill Gardens shall have a good faith discussion with respect to the release of the letter of credit.
9. The Town agrees that in the event the Town, from the date of this Agreement, uses Development Charges to pay a portion of the cost of the Hydro Burial Project then the Development Charges shall be applied to reduce the total cost of the Hydro Burial Project for both the Town and Fonthill Gardens so that the percentage cost to each party shall be calculated on this reduced amount.
10. 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 e-mail to the Party to whom such notice is directed as follows:

To the Town:
The Corporation of the Town of Pelham
20 Pelham Town Square
P.O. Box 400
Fonthill, ON L0S 1E0
Attention: Nancy Bozzato, Town Clerk
Email: NBozzato@pelham.ca

To Fonthill Gardens:
Fonthill Gardens Inc.
4211 Yonge Street
Suite 230
Toronto ON M2P 1A9
Attention: David Allen
Email: davida@allengroup.ca

11. The Town and Fonthill Gardens acknowledge that this Agreement represents the final agreement of the Parties with respect to the Hydro Burial Project. In the event of any conflict between the provisions of any prior agreement between the Town and Fonthill Gardens the terms of this Agreement shall prevail. In particular, no adjustment shall be made to the purchase price paid by the Town to Fonthill Gardens for the purchase of the lands known as the "Wellspring Block".
12. The performance of this Agreement shall be conditional upon the closing of the real estate transaction between the parties under the Agreement dated April 1, 2019, as amended.
13. This Agreement shall be binding upon successors and assigns of the parties.

IN WITNESS WHEREOF the parties have executed this Agreement under the hands of their respective corporate officers duly authorized.

THE CORPORATION OF THE TOWN OF
PELHAM

Per: _____
Marvin Junkin – Mayor

Per: _____
Nancy Bozzato – Town Clerk
We have authority to bind the Town.

FONTHILL GARDENS INC.

Per:  _____
David Allen - President
I have authority to bind the Corporation.

SCHEDULE "A"

Blocks 1, 2, 6, 7, 9, 10, 11, 15 and 17
Plan 59M-432
Town of Pelham

SCHEDULE "B"

Blocks 3, 4, 5, 8, 12, 13, 14 and 16
Plan 59M-432
Town of Pelham