**INFLOW AND INFILTRATION STUDY AGREEMENT**

BETWEEN:

THE CORPORATION OF THE TOWN OF NIAGARA-ON-THE-LAKE (hereinafter referred to as the “Town”)

-and-

ST ANDREWS GLEN (NIAGARA-ON-THE-LAKE) LIMITED (hereinafter referred to as the “Developer”)

**WHEREAS:**

1. Town Council has directed Town staff to initiate discussions with private sector proponents interested in paying for an Inflow and Infiltration Investigation (“I & I Investigation”) including implementation and monitoring programs;
2. The Town has agreed to permit the Developer to participate in the I & I Investigation currently being undertaken by the Town and the Regional Municipality of Niagara in Virgil (the “Virgil I & I Investigation”); and
3. This Agreement is intended to address the allocation of sanitary sewer capacity to the Developer’s St. Andrews Glen Development;

NOW THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of the mutual covenants and agreements contained herein, the Town and the Developer have agreed as follows;

**Definitions**

In this Agreement, the words and phrases set out below are defined as follows:

“Catchment Area” means the physical area of the community lying upstream of a pumping station that is served by a system of publicly-owned sanitary sewers and appurtenances and private service connections which drain into that pumping station;

“I & I Investigation” means the study of inflow and infiltration of the Town’s sanitary sewer system in the Catchment Area conducted by the Town’s engineering consultant in accordance with the study outline and implementation schedule, and includes the creation of flow monitoring records and an Investigation Report;

“Investigation Report” means the report prepared by the Town’s engineering consultant which identifies areas within the Catchment Area which are subject to inflow and/or infiltration and provides an outline of the Remedial Work required to address the inflow and/or infiltration, together with an estimated cost of the Remedial Work.

“Remedial Work” means the work identified by the Town’s engineering consultant in the Investigation Report as being necessary to address the inflow and/or infiltration of the sanitary sewer system identified through the I & I Investigation.

“Remedial Work Plan” means the proposed schedule of Remedial Work to be undertaken by the Town prepared by the Town’s engineering consultant and approved by the Director, which shall include provision for flow monitoring after the completion of the Remedial Work.

“Remedial Work Report” means the report submitted by the Town’s engineering consultant following the completion of the Remedial Work which identifies the Remedial Work completed by the Town. This shall include flow data collected during the I & I Investigation and after the completion of the Remedial Work, the engineering consultant’s analysis of flow data collected and the calculation of sanitary sewer capacity that is available to be allocated as a result of the reduction in inflow and/or infiltration resulting from the Remedial Work.

“St Andrews Glen Development” means the property of the Developer municipally known as Lots 1-10, 19-24 and 57 on Plan 30M-283 on which the Developer has proposed to develop a residential condominium containing 57 units.

**I & I Investigation Area**

**1.01** The Catchment Area investigated by the Virgil I & I Investigation is the area identified in Schedule “A” to this Agreement.

**1.02** For the purposes of isolating and clearly identifying the reduction in flow, there shall be no more than one Agreement in effect at any one time as it relates to a Catchment Area serviced by any one sewage pumping station.

**Scope of Work**

**2.01** The Town and the Region shall undertake the I & I Investigation in accordance with the study outline and implementation schedule prepared by the Town’s engineering consultant (the “Study”) which is attached hereto as Schedule “B”.

**2.02** The Town’s engineering consultant shall be responsible for the implementation of the Study and for the supervision and inspection of the work conducted pursuant to the Remedial Work Plan to ensure that the work is done in accordance with the approval granted by the Director.

**2.03** The Developer shall upon the execution of this Agreement pay the sum of $26,177*.*00to the Town to reimburse the Town for one half of the Town’s share of the cost of the I & I Study currently underway in Virgil.

**2.04** The Developer acknowledges that the Developer shall not be eligible for any development charge credits from either the Town or the Regional Municipality of Niagara with respect to the Study or Remedial Work done pursuant to this Agreement.

**2.05** Upon the completion of the Study, the Town’s engineering consultant shall submit the Investigation Report to the Director. The Director shall advise the Developer as to what portions of the Remedial Work identified therein the Town intends to complete and shall provide the Developer with a copy of the Remedial Work Plan. The timing of the commencement and completion of the Remedial Work shall be in the sole discretion of the Town.

**2.06** All flow monitoring records, inspection reports and the Investigation Report shall become the property of the Town upon completion of the I & I Investigation.

**Allocation of Sanitary Sewer Servicing Capacity – St. Andrews Glen Development**

**3.01** The Town and the Developer acknowledge and agree that the St. Andrews Glen Development requires the allocation by the Town of an additional 30 units of sanitary sewer capacity. The Town and the Developer acknowledge and agree that sanitary sewer capacity for the St. Andrews Glen Development shall be allocated as follows:

(a) The Developer shall transfer 9 units of sanitary sewer capacity (“Units”) previously approved for another property of the Developer (Lots 42 to 47, 59, 60 & 61)

(b) The Town shall give the Developer credit for two Units in recognition of the heritage site at St. Andrew’s Glen.

(c) The Town shall allocate 11 Units for the St. Andrews Glen development upon the execution of this Agreement.

(d) The remaining 8 lots in the St Andrews Glen development will not have sanitary sewer capacity allocated until the earlier of:

1. The date that the new treatment facility becomes operational; or
2. The date on which the Town chooses in its sole discretion to re-allocate sanitary sewer capacity to the St. Andrews Glen development pursuant to subsection 4f) of Town Policy GEN-AWW-001.

**3.02** The Developer acknowledges that it is responsible for the cost of realizing an increase in sanitary sewer capacity of 22 Units. 11 Units will be allocated to the Developer’s St. Andrew’s Glen development as set out above and the remaining 11 Units shall be allocated by the Town in its sole discretion.

**3.03** The Developer shall upon execution of this Agreement provide a Letter of Credit to the Town in the amount of $110,000.00, based on $5,000.00 per unit of capacity required, as security for payment of actual costs involved in gaining 22 Units of additional capacity. The Developer agrees to pay a minimum contribution of $1,250.00per unit of capacity required. The Developer’s actual contribution above the minimum contribution shall be based on the average cost per unit of capacity gained as a result of the Virgil I & I Study identified Remedial Work completed, to a maximum of $5,000 per Unit for the 22 Units required. The measurement of capacity gained shall be made after the completion of the Remedial Work as confirmed by after flow monitoring.

**3.04** The Developer shall pay the minimum contribution of $27,500.00 to the Town upon the completion of the Remedial Work within 30 days of delivery of an invoice from the Town for this payment. Should the invoice not be paid within 30 days of delivery of the invoice, the Town shall be entitled to draw on the Letter of Credit to pay the invoice in full. The Developer shall pay the actual amount of its contribution as calculated by the Town after the actual capacity gained has been confirmed by after flow monitoring within 30 days of delivery of an invoice from the Town for this payment. Should the invoice not be paid within 30 days of delivery of the invoice, the Town shall be entitled to draw on the Letter of Credit to pay the invoice in full.

**3.05** Notwithstanding paragraph 3.01 (d) above, the Developer is entitled to secure additional capacity for any or all of the remaining lots in the St. Andrews Glen development at any time prior to December 2014 upon provision of a Letter of Credit based on $5,000 per unit of capacity required and all of the provisions of this Agreement shall then apply to these additional lots.

**3.06** Notwithstanding paragraph 3.01 (a) above, the Developer is entitled to re-allocate the capacity transferred to the St Andrews Glen development to Lots 42 to 47, 59, 60 & 61 should the Developer wish to develop any of these Lots, provided that this capacity has not already been used with respect to sanitary sewer connections made or building permits issued in the St Andrews Glen development.

**3.07** The Developer acknowledges and agrees that the Town is not liable to the Developer for any costs in the event that the Regional Municipality of Niagara or the Ministry of the Environment refuses to permit connection to the sanitary sewer system as a result of over capacity.

**Indemnification**

**4.01** The Developer hereby indemnifies the Town and the Regional Municipality of Niagara from any and all legal actions, claims and damages which may arise as a result of this Agreement including any legal actions, claims or damages arising from the Town agreeing to permit the Developer to participate in the Virgil I & I Investigation pursuant to this Agreement.

**Communication Protocol**

**5.01** All written communication with the Town shall be addressed as follows:

Corporation of the Town of Niagara-on-the-Lake

3 Lorraine Street, Virgil, ON L0S 1T0

Attention: Director of Public Works

**5.02** All written communication with the Developer shall be addressed as follows:

St. Andrews Glen (Niagara-on-the-Lake) Limited

PO Box 516

St. Davids, Ontario L0S 1P0

Attention: Bryce Ivanchuk

**5.03** The Developer and the Town shall establish a communications protocol prior to the commencement of any work pursuant to this Agreement.

Dated at the Town of Niagara-on-the-Lake, Ontario this \_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_, 2013.

The Corporation of the Town of

Niagara-on-the-Lake

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Dave Eke – Lord Mayor

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Holly Dowd – Town Clerk

St. Andrews Glen (Niagara-on-the-Lake) Limited

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Bryce Ivanchuk – President

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– Secretary Treasurer

We have authority to bind the Corporation.