

**C O R P O R A T I O N**  
**OF THE**  
**TOWN OF NIAGARA-ON-THE-LAKE**  
**BY-LAW NO. XXXX-12**

Cannery Park Subdivision  
Roll No # 2627 020 025 11400

A BY-LAW TO AUTHORIZE A MODEL HOME AGREEMENT  
BETWEEN THE CORPORATIONS OF THE TOWN OF NIAGARA-  
ON-THE-LAKE AND SOLMAR HOMES INC.

BE IT ENACTED AS A BY-LAW OF THE CORPORATION OF THE  
TOWN OF NIAGARA-ON-THE-LAKE as follows:

1. THAT the Agreement dated the XX day of November 2013 between the Corporation of the Town of Niagara-on-the-Lake and Solmar Homes Inc., be and the same is hereby approved; and
2. THAT the Lord Mayor and Clerk be authorized to affix their hands and the the Corporate Seal; and
3. THAT this by-law shall come into force and take effect immediately upon the passing thereof.

**READ A FIRST, SECOND AND THIRD TIME AND PASSED THIS XX DAY OF  
NOVEMBER 2013**

\_\_\_\_\_  
LORD MAYOR, DAVE EKE

\_\_\_\_\_  
TOWN CLERK, HOLLY DOWD

THIS INDENTURE made in triplicates this XX day of August, 2012.

BETWEEN:

THE CORPORATION OF THE TOWN  
OF NIAGARA-ON-THE-LAKE  
(Hereinafter called the 'Town')

OF THE FIRST PART,

-And- SOLMAR HOMES INC.  
(Hereinafter called the 'Developer')

OF THE SECOND PART,

**WHEREAS** the Developer is the Developer of the lands in the Town of Niagara-on-the-Lake described in Schedule 'A' attached hereto, and has applied to the Town of Niagara-on-the-Lake for approval of a Model Home Agreement to construct model homes consisting of five buildings on the lands prior to the registration of the Plan of Subdivision File 26T-18-10-01 Revised and prior to the execution of the related subdivision agreement;

**AND WHEREAS** the Town has draft approved a Plan of Subdivision for the lands that provides 235 residential lots;

**AND WHEREAS** this Agreement has been entered into pursuant to Section 41 of the Planning Act, R.S.O. 1990, c. P.13; and subsection 10 of Section 41 of the Planning Act, R.S.O. 1990, c. P.13, as amended, provides for the registration of Agreements on the title of the Lands.

**NOW THEREFORE THIS INDENTURE WITNESSETH** that in consideration of the mutual covenants hereinafter expressed and other good and valuable consideration, the parties hereto covenant and agree one with the other as follows:

## **1 GENERAL CONDITIONS**

In this Agreement: unless there is something in the subject matter or context inconsistent therewith:

1.1 The lands affected by this Agreement are as follows:

Lots 1 to 5 on the Draft Plan of Subdivision, as outlined on Schedule "A".

- 1.2 The Town hereby agrees to the erection, by the Developer, of five (5) model homes prior to the registration of Plan of Subdivision File 26T-18-10-01 Revised.
- 1.3 The Developer hereby covenants and agrees to construct the model homes in compliance with all applicable by-laws and regulations and to make the necessary application to the Town to obtain building permits prior to commencement of such construction.
- 1.4 The Developer covenants and agrees that, in the event that it is found that the model homes have not been constructed in compliance with all applicable by-laws and regulations following the registration of the Plan of Subdivision, approval by the Committee of Adjustment of all minor variances will be obtained prior to any occupancy of buildings. The Developer further covenant and agree that if the minor variances are not approved by the Committee of Adjustment or the Ontario Municipal Board, the buildings will be demolished by the Developer at the Developer's expense. Should the Developer neglect or refuse to demolish the said houses within 60 days, the Developer hereby grants permission to the Town to enter upon the lands and to do the said work at the Developer's expense.
- 1.5 It is understood and agreed that this Agreement is for the purpose of erecting model homes prior to the registration of a Plan of Subdivision and, therefore, there shall be no Agreements of Purchase and Sale entered into which would have the effect of requiring occupation of the model homes by purchasers prior to the registration of the Plan and obtaining compliance with the occupancy requirements set out in any forthcoming subdivision agreement. The Developer further covenants with the Town that there shall be no occupation of the model homes prior to the registration of the Plan and obtaining compliance with the occupancy requirements set out in any forthcoming subdivision agreement. It is further understood and agreed that the Town shall be entitled to draw upon the security as set out in Clause 7.2 should a building be occupied in contravention of this Agreement, in the amount of \$5,000 per occurrence.

## **2 ENGINEERING CONDITIONS**

- 2.1 The Developer covenants and agrees to provide a General Grading Plan for the subdivision to the Town for review and approval by the Director of Public Works.
- 2.2 The Developer covenants and agrees that individual lot grading plans are to be prepared to provide grading details for each lot and are to conform to the General Grading Plan as approved by the Director of Public

Works. No building permits will be issued until these plans are submitted to the Town and approved by the Director of Public Works.

- 2.3 The grading of the lands shall be carried out in general conformance with the elevations and spot levels shown on the individual lot grading plan as approved by the Director of Public Works and in general accordance with the Town's design criteria, standards, specifications and good engineering practices. The Developer will be responsible for ensuring that all builders and/or purchasers carry out the grading as noted in this clause.
- 2.4 The Developer covenants and agrees to ensure that model homes are not connected to the municipal water and waste water system. The placement of plugs within servicing laterals shall satisfy this requirement.

### **3 PLANNING CONDITIONS**

- 3.1 The Developer covenants and agrees to submit a site plan identifying the subject lots, access route from a public road, operable hydrant locations, parking area, location of portable toilets and any other items as required by the Director of Community & Development Services. The Director's approval shall be obtained prior to applying for building permits.
- 3.2 The Developer covenants and agrees to construct the units in conformity with the designs as previously approved by the Director of Community & Development Services.
- 3.3 The Developer hereby agrees that external lighting shall be designed and shielded so as not to cast light on adjacent properties.

### **4 BUILDING SERVICES CONDITIONS**

- 4.1 The Developer agrees that a building permit will be applied for in compliance with the Ontario Building Code and all applicable regulations and upon compliance with all requirements of this Agreement.

### **5 FIRE & EMERGENCY SERVICES CONDITIONS**

- 5.1 The Developer agrees that access for emergency services and water supply availability for fire fighting (as identified on the site plan) shall be approved by the Fire Department prior to issuance of building permits for the model homes.
- 5.2 The Developer agrees:
  - 5.2.1 To erect temporary signage on each lot identifying the lot number, municipal street number and the builder's name prior.
  - 5.2.2 To install, prior to the opening of the model home, house numbers that are sufficiently illuminated and in a prominently visible height and location which may be designed in

accordance with the requirements of the Specifications and ensure that they are maintained as installed.

## **6 ADMINISTRATION**

- 6.1 The Developer covenants to register the Plan of Subdivision as expeditiously as possible.
- 6.2 The parties hereby covenant and agree that this Agreement and any schedules attached hereto shall be registered upon title to the Lands. The Developer further agrees to pay all costs associated with the preparation and registration of this Agreement, as well as all other costs incurred by the Town as a result of the registration of any other documents pertaining to this Agreement, including but not limited to, any amendment thereto notwithstanding that such registration may have been solely at the instance of the Town.
- 6.3 The Developer acknowledges that the Town, in addition to any other remedy it may have at law, shall also be entitled to enforce this Agreement in accordance with s. 442 of the *Municipal Act, 2001*.
- 6.4 The Town agrees to release this Agreement, or part thereof, from title to the Lands following the execution of a subdivision agreement for the subject lands, registration of the plan and issuance of occupancy permits that permit the occupancy of the models as dwelling units.
- 6.5 Nothing in this Agreement shall relieve the Developer from compliance with all applicable municipal by-laws, laws and/or regulations or laws and/or regulations established by any other governmental body which may have jurisdiction over the Lands.
- 6.6 The part numbers and headings, subheadings and section, subsection, clause and paragraph numbers in this Agreement are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- 6.7 This Agreement shall be constructed with all changes in number and gender as may be required by the context.
- 6.8 Every provision of this Agreement by which the Developer is obligated in any way shall be deemed to include the words "at the expense of the Developer" unless the context otherwise requires, which includes, without limitation, all associated or ancillary disbursements, costs and applicable taxes (including HST).
- 6.9 References herein to any legislation (including by-laws) or any provision thereof include such legislation or provision thereof as amended, revised,

re-enacted and/or consolidated from time to time and any successor legislation thereto.

- 6.10 All obligations herein contained, although not expressed to be covenants, shall be deemed to be covenants. Any reference in this Agreement whereby the Developer agrees to do something shall be deemed to read “covenants and agrees.”
- 6.11 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.
- 6.12 The Developer and the Town agree 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.
- 6.13 The Developer agrees:
- 6.13.1 To save, defend and keep harmless and fully indemnify the Town and each of its elected officials, officers, employees and agents of, from and against all manner of actions, suits, claims, executions and demands which may be brought against or made upon the Town, its elected officials, officers, employees and agents or any of them and of, from and against all loss, costs, charges, damages, liens and expenses which may be sustained, incurred or paid by the Town, its elected officials, officers, employees and agents, or any of them, by reason of, or on account of, or in consequence of the Town entering into this Agreement and the fulfillment by the Developer of its obligations under this Agreement including the default or breach by the Developer of its obligations under this Agreement or by reason of any negligence or wilful default of the Developer, its officers, employees, agents or persons acting under its direction in connection with the Developer’s obligations hereunder.
- 6.13.2 To pay to the Town and to each such elected official, officer, employee or agent on demand, any loss, costs, damages and expenses which may be sustained, incurred or paid by the Town or by any of its elected officials, officers, employees and agents in consequence of any such action, suit, claim, lien, execution or

demand and any monies paid or payable by the Town or any of its elected officials, officers, employees or agents in settlement of or in discharge or on account thereof.

- 6.13.3 To release the Town and each of its elected officials, officers, employees and agents of, from and against all manner of actions, suits, claims, executions and demands which could be brought against or made upon the Town its elected officials, officers, employees and agents or any of them and of, from and against all loss, costs, charges, damages, liens and expenses which may be sustained, incurred or paid by the Developer by reason of, or on account of, or in consequence of the fulfillment of their respective obligations or exercise of their respective powers under this Agreement. Any amounts owing to the Town pursuant to the obligation of the Developer to indemnify the Town pursuant to the terms of this Agreement may be collected by the Town, in addition to any other remedies it may have, as taxes with all such amounts to be payable as directed by Town Council pursuant to Section 427 of the Municipal Act, 2001.
- 6.14 The Developer agrees that it shall not be entitled to the issuance of building permits for any lots in the Plan of Subdivision until this Agreement has been executed and duly registered on title. The Developer agrees and consents to the registration of this Agreement being considered "applicable law" for the purposes of building permit issuance pursuant to subsection 8(2) of the *Building Code Act, 1992*.
- 6.15 The parties 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, notwithstanding any provision in section 51 of the *Planning Act* interpreted to the contrary. 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 an estoppel of any denial of such right.
- 6.16 Notwithstanding any other provisions of this Agreement, the parties hereto agree with each other that none of the provisions of this Agreement (including a provision stating the Parties' intention) is intended to operate, nor shall have the effect of operating in any way to fetter the Council which authorized the execution of this Agreement or any successors of council in the exercise of any of Council's discretionary powers, duties or authorities. The Developer hereby

acknowledges that it will not obtain any advantageous planning or other consideration or treatment by virtue of it having entered into this Agreement or by virtue of the existence of this Agreement.

- 6.17 This Agreement shall be interpreted under and is governed by the laws of the Province of Ontario.
- 6.18 It is hereby agreed by and between the parties hereto that this Agreement shall be enforceable by and against the parties hereto, their heirs, executors, administrators, successors and assigns and that the Agreement and all the covenants by the Developer herein contained shall run with the Lands.
- 6.19 Prior to commencing any work with respect to the Plan of Subdivision, the Developer shall take out and keep in force comprehensive general liability insurance against claims for personal injury, death or property damage resulting from any accident or occurrence. The Developer shall deliver with this Agreement (if not previously delivered) a certified copy of the policy of liability insurance or a certificate of insurance setting out the essential terms and conditions of insurance, the form and content of which shall be satisfactory to the Town and naming the Town as an additional insured. Such policy shall be kept in full force and effect until all of the services required under this Agreement have been assumed by the Town and shall comply with the following provisions:
- 6.19.1 The minimum limit shall be \$5,000,000.00, all inclusive, for property damage and personal liability;
- 6.19.2 It shall not contain a clause for exclusion for blasting;
- 6.19.3 The premium must be paid initially for a period of one year and the policy shall be renewed for further one-year periods until all services required under this Agreement are installed and assumed by the Town;
- 6.19.4 If the policy contains a deductible clause, the Developer agrees that it shall be liable and responsible for the deductible amount, and will provide a letter from the Developer authorizing the Town to appoint an independent adjuster and to investigate claims less than the deductible amount and authorizing the Town to pay such claims determined to be valid by the adjuster out of the said deposit. The Developer is responsible for all adjustment service costs and shall maintain the deposits in the amount of the deductible;
- 6.19.5 The policy shall provide for cross-liability and severability of interest protecting the Town against claims by the Developer as



it were separately insured and providing that the Town shall be insured notwithstanding any breach of any condition in the policy by any other insured; and

- 6.19.6 The policy shall provide that the insurer shall not cancel or refuse to renew it without first giving the Town at least sixty (60) days prior written notice.
- 6.20 The issuance of such policy of insurance shall not be construed as relieving the Developer from responsibility for other or larger claims, if any, for which the Developer is or may be liable under this Agreement or at law.
- 6.21 If the Town receives notice from the insurer that it has cancelled or refused to renew the insurance, or that it intends to do so, or if the Town otherwise determines that the insurance has lapsed or is about to lapse without renewal or replacement, the Town may, on written notice to the Developer and at the sole cost and expense of the Developer, obtain insurance in accordance with this section. In such circumstances, the Town shall be entitled to obtain new insurance or add the necessary insurance coverage to the Town's blanket insurance. The Developer shall forthwith, upon receipt of written notice thereof from the Town, reimburse the Town for the cost of such insurance payable as noted above. In addition, the Town shall, at its sole discretion and option, be entitled to draw upon any security posted under this Agreement to cover the costs of the insurance.

## **7 FEES AND SECURITIES**

- 7.1 The Developer covenants and agrees to submit to the Town, upon execution of this Agreement, a cheque in the amount as established in Schedule of "C" as a fee for the preparation and registration of this agreement.
- 7.2 The Developer covenants and agrees to submit to the Town, upon execution of this Agreement, a Letter of Credit in the amount as established in Schedule of "C" to guarantee compliance with the terms herein. It is understood and agreed that the Town may draw on the said Letter of Credit in the event that this Agreement is not complied with.

**THIS AGREEMENT** and everything herein contained shall enure to the benefit of and be binding upon the successors and assigns of the parties hereto and upon those persons or corporations hereafter acquiring title to all or any part of the lands described in Schedule A attached hereto.

ANY NOTICE GIVEN HEREUNDER SHALL BE SUFFICIENTLY GIVEN AND  
ADDRESSED TO THE DEVELOPER AND MORTGAGEE BEING:

<b>DEVELOPER:</b> SOLMAR HOMES INC.

**IN WITNESS WHEREOF** the Developers have hereunder set their hand seal  
and Town has hereunto affixes it Corporate Seal under the hands of its Lord  
Mayor and Town Clerk.

SIGNED, SEALED AND DELIVERED  
in the presence:

**THE CORPORATION OF NIAGARA-ON-  
THE-LAKE:**  
per:

\_\_\_\_\_  
**LORD MAYOR DAVE EKE**

\_\_\_\_\_  
**TOWN CLERK HOLLY DOWD**

Solmar Homes Inc:  
per:

\_\_\_\_\_  
I, \_\_\_\_\_, have the authority to bind  
the corporation.

**SCHEDULE A**

**LEGAL DESCRIPTION**

"Cannery Park Subdivision", being Part of Lot 89 in the Town of Niagara-on-the-Lake.

Roll No # 2627 020 025 11400

PIN # 46372-0603 {LT}

DRAFT

**SCHEDULE B**

**SOLICITOR'S CERTIFICATE OF OWNERSHIP**

DRAFT

**SCHEDULE C**

**FINANCIAL OBLIGATIONS OF THE DEVELOPER**

<b><u>FEE</u></b>	<b><u>AMOUNT</u></b>
1. Agreement Preparation Fee (as per Clause 7.1)	\$590
<b>TOTAL</b>	<b>\$590</b>

<b><u>LETTERS OF CREDIT</u></b>	<b><u>AMOUNT</u></b>
1. Clause 1.4 – Site Restoration (\$10,000/unit)	\$50,000
2. Clause 1.5 – Occupancy (\$5,000/unit)	\$25,000
3. Clause 2.3 – Grading (\$5,000/unit)	\$25,000
4. Clause 2.4 – Dry Models (\$5,000/unit)	\$25,000
<b>TOTAL</b>	<b>\$125,000</b>

DRAFT

**SCHEDULE D**

**RETURN OF LETTER OF CREDIT**

The Town covenants and agrees to return the Letter of Credit as follows:

1. Clause 1.4 – Site Restoration: When the final plan has been registered and an OLS has confirmed the model homes have been sited in compliance with the zoning by-law.
2. Clause 1.5 – Occupancy: When the subdivision agreement has been registered on title.
3. Clause 2.3 – Grading: When the subdivision agreement has been registered on title.
4. Clause 2.4 – Dry Models: When the subdivision agreement has been registered on title.

DRAFT