

**THE CORPORATION
OF THE
TOWN OF NIAGARA-ON-THE-LAKE
BY-LAW NO. 4796-15**

Phase 3 of The Village, West

A BY-LAW TO AUTHORIZE A SUBDIVISION AGREEMENT
BETWEEN THE CORPORATION OF THE TOWN OF NIAGARA-ON-
THE-LAKE AND TRADITIONAL NEIGHBOURHOOD
DEVELOPMENTS 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 2nd day of March, 2015 between The Corporation of the Town of Niagara-on-the-Lake and Traditional Neighbourhood Developments Inc. be and the same is hereby approved; and
2. THAT the Lord Mayor and Clerk be authorized to affix their hands and 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 2ND DAY
OF MARCH, 2015**

LORD MAYOR, PAT DARTE

TOWN CLERK, HOLLY DOWD

THIS INDENTURE made this 2nd day of March, 2015.
BETWEEN:

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

OF THE FIRST PART,

-and-

TRADITIONAL NEIGHBOURHOOD DEVELOPMENTS INC.
(Hereinafter called the 'Developer')

OF THE SECOND PART,

WHEREAS the Developer is the Owner 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 Subdivision Agreement for the purpose of registering the same in the Land Titles Office for Niagara North;

AND WHEREAS the Developer desires to subdivide and develop The Lands in accordance with a proposed draft Plan of Subdivision;

AND WHEREAS the Town agrees that it will release the Plan for registration subject to the terms and conditions of this Agreement and the conditions of Draft Plan Approval;

AND WHEREAS the Town requires the Developer, before Final Approval of the proposed Subdivision Agreement, to pay for the construction and installation of certain municipal services hereinafter described to serve such a Subdivision and to agree to the provisions herein contained;

AND WHEREAS this Agreement applies to the "Phase 3 of The Village, West", being part of Part of Lot 205, Plan M-11 in the Town of Niagara-on-the-Lake, prepared by William A. Mascoe Surveying Ltd., Ontario Land Surveyor dated February 10, 2015 for a total of 12 single-detached residential Lots, 3 semi-detached residential Blocks, 1 Block for use as a laneway, 1 Block for Parks Dedication, Perez Road and Rampart Street;

AND WHEREAS this Agreement is an agreement executed under the authority of s. 51(26) of the Planning Act, R.S.O. 1990, c. P.13, as amended, and as such may be registered against title in the Land Titles Office for Niagara North No. 30 at St. Catharines.

NOW THEREFORE THIS INDENTURE WITNESSETH that in consideration of the Town approving the said Plan of Subdivision and, in consideration of the sum of One Dollar (\$1.00) of lawful money of Canada now paid by the Developer to the Town (the receipt thereof is hereby acknowledged), the parties hereto covenant and agree one with the other as follows:

1 DEFINITIONS

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

- 1.1 'Approved Plans' means the required plans as approved by the Town and other government agencies including conservation authorities.
- 1.2 'Assumption of the Subdivision' shall mean the date when all works under the Agreement have been completed, the maintenance period for public works has expired, no other obligations under the Agreement remain outstanding other than as may be specified on the date of assumption.
- 1.3 'Certificate of Completion' means the Certificate of Completion of all Primary, Secondary, and Tertiary Services issued by the Director of Operations, acting reasonably, upon being satisfied that the Primary, Secondary, and Tertiary Services have been completed.
- 1.4 'Conditions' means the Conditions of draft approval for the Draft Plan of Subdivision imposed by the Town in accordance with the requirements of the Planning Act, Ontario.
- 1.5 'Developer' includes the successors, assigns, heirs, executors, administrators, or other legal representatives of the Developer to whom the context can apply according to law.
- 1.6 'Easement' means easements that are to be conveyed to the Town or Region to service The Lands.
- 1.7 'Final Approval' means Final Approval of the Plan for registration given by the Town in accordance with the requirements of the Planning Act (Ontario).
- 1.8 'Final Certificate of Approval' means the certificate issued by the Director of Operations, acting reasonably, upon being satisfied with the completion of the Primary, Secondary and Tertiary services and the completion of all maintenance required during the one (1) year maintenance periods provided for herein.
- 1.9 'Final Plan' means a plan prepared at the request of the Developer and submitted to the approval authority as a Final Plan suitable for registration. Upon registration the Registered Plan shall be the Final Plan for the purposes of this Agreement.
- 1.10 'Highway' means land dedicated as a public highway by the Plan and includes a proposed public highway and proposed road widening shown on the Draft Plan.
- 1.11 'Inspector' means the Inspector appointed by the Town of Niagara-on-the-Lake for the subdivision and provides inspection services on behalf of the Town.
- 1.12 'Install' shall also mean reinstall, provide, construct, or reconstruct.

- 1.13 'Lands' means all of The Land shown on the draft Approved Plan and further described in Schedule 'A' attached.
- 1.14 'Primary Services' means road signs, hydro wiring, street lighting, sidewalks (where required as Primary Services in Schedule 'C'), watermains, sewers, both sanitary and storm, and any pumping station, catch basins or other appurtenances, the base road including base asphalt, curbs and gutters, community mail box pads and lot pre-grading including swales.
- 1.15 'Required Plans' means all of the plans and specifications for all of the works, matters, and things required to be designed, installed, and done by the Developer by this Agreement for the subdivision and development of The Lands, including without limiting the generality of the forgoing, servicing plans, street lighting plans (which include the plans for the noise attenuation works), etc. Where the subject matter or context of a particular section of this Agreement requires reference to any one of the required plans, it may be referred to by its individual name, ie. 'required street lighting plans'.
- 1.16 'Secondary Services' means top coat of asphalt, sidewalks (where required as Secondary Service in Schedule 'D') and any services not included in 'Primary' or 'Tertiary Services'.
- 1.17 'Street Lighting' means street lighting and park walkway lighting system which includes all poles, standards, arms, lights, fixtures, wires, ducts and related equipments that are necessary for the safe illumination of the roadway, boulevard, park and walkway to the Town requirements.
- 1.18 'Surveyor' means an Ontario Land Surveyor.
- 1.19 'The Engineer' shall refer to the Developer's Consulting Engineer.
- 1.20 'The Land' means the real property described and shown in Schedule 'A'.
- 1.21 'Tertiary Services' means those services or lot improvements that must be carried out as the buildings on each individual lot are completed and including tree planting, curb cut, driveway paving on the road allowance, final lot grading and sodding of boulevards.

2 ORGANIZATION OF AN AGREEMENT

- 2.1 This Agreement shall define the obligations and duties of the Developer with respect to the Plan of Subdivision of The Lands, and without limiting the generality of the foregoing, shall include the installation, construction, repair and maintenance of the public works to be provided and payments required to be made to the Town and such other matters as are more specifically set out herein and shall further define the responsibilities of the Developer related to the acceptance and assumption of the said Plan of Subdivision.

- 2.2 All schedules attached hereto shall form part of this Agreement and shall have the same force and effect as if the information on them were contained in the body of this Agreement.

3 PRECONDITIONS TO THE SIGNATURE OF THE AGREEMENT BY THE TOWN

- 3.1 The Developer covenants and agrees that any outstanding taxes will be paid prior to the registration of the Final Plan.
- 3.2 The Developer covenants and agrees to commute and pay, upon execution of this Agreement, all designated charges, local improvement charges, and imposed rates now assessed and levied upon The Land, including but not limited to levies under the *Local Improvement Act*, *Ontario Water Resources Act*, *Public Utilities Act*, *Drainage Act*, and the *Municipal Act, 2001*, and any other special levies or charge against the property, save and except development charges.
- 3.3 The Developer shall prepare cost estimates for the construction of all Primary, Secondary and Tertiary off-site and on-site services and an estimate of the number of working days upon which the calculation for inspections, letters of credit and security deposits shall be based.
- 3.4 The Developer covenants and agrees to grant to the Town and all appropriate authorities, free from encumbrances, the land dedications and easements for public purposes, as described in Schedule 'B' hereto, or if the subdivision is constructed in phases, such conveyances and easements necessary for that phase. The documents for all Lands described in Schedule 'B' shall be deposited with the Town before execution of this Agreement by the Mayor and Clerk, with the plan numbers left blank in the description in the document. The Town is hereby authorized to fill in such blanks after the Plan of Subdivision is registered and a plan number is assigned.
- 3.5 The Developer shall comply with all conditions of the Subdivision Agreement, which are hereby referentially incorporated.
- 3.6 The Developer hereby covenants and agrees that this Agreement and the schedules hereto, or any part thereof, will be registered by the Town upon the title of The Land within the proposed Plan of Subdivision and a copy of the registered Agreement will be given to the Developer.
- 3.7 The Developer agrees to transfer and convey to the Town for parks dedication purposes, in satisfaction of the Developer's obligation pursuant to Section 51.1 of the *Planning Act* R.S.O. 1990, CHAPTER P.13 as amended, Block 17 as shown on the draft Plan of Subdivision prepared by William A. Mascoe Surveying Ltd. dated February 10, 2015.

- 3.8 The Developer shall name all public roads within the development to the satisfaction of the Town and deeded to the Town of Niagara-on-the-Lake free and clear of any mortgages, liens or encumbrances.
- 3.9 The Developer further covenants and agrees to submit a Final Plan of Subdivision for approval.
- 3.10 The Developer agrees that the commitment of servicing allocation by the Regional Municipality of Niagara will be assigned at the time of Final Approval of the subdivision for registration purposes.
- 3.11 The Developer shall provide the Niagara Region Development Services with a written undertaking that all offers and agreements of purchase and sale, which may be negotiated prior to registration of this subdivision, shall contain a clause clearly indicating that a servicing allocation for this subdivision will not be assigned until the Plan is granted Final Approval for registration.
- 3.12 The Developer shall obtain Ministry of the Environment Certificates of Approval for the necessary servicing (watermains, storm sewers and sanitary sewers) for this development to the satisfaction of the Regional Public Works Department and the Town Operations Department, prior to registration of this Plan of Subdivision.

Note: The design of any new stormwater management system should be submitted directly to the Ministry of the Environment, Toronto office, for approval and issuance of a Certificate of Approval.

4 PRECONDITIONS FOR CONSTRUCTION OF SERVICES

Before any work is commenced:

- 4.1 The Developer hereby agrees and undertakes to save harmless and keep indemnified the Town, its successors and assigns from and against all manner of actions or claims for loss, costs, charges, damages, injuries, expenses or otherwise arising before the issuance of the Final Certificate of Approval and during the maintenance period, in connection with the work required to be done herein by the Developer, contractors, servants or agents.
- 4.2 The Developer shall supply the Town with a liability insurance policy in the amount of \$5,000,000.00 in a form satisfactory to the Town, indemnifying the Town from any loss arising from claims or damages, injury or otherwise in connection with the work done by or on behalf of the Developer of the Plan of Subdivision. The said policy shall specifically refer to all work to be undertaken by the Developer or its agents on public road allowances. The policy shall be maintained in full force and effect until the Town assumes the Plan of Subdivision. In the event any renewal premium is not paid, the Town, in order to prevent the lapse of such

liability insurance policy, may pay the renewal premium or premiums and the Developer agrees to pay the cost of such renewal or renewals within fourteen (14) days of the account therefore being rendered by the Town. The Developer covenants and agrees that the Town reserves the right to draw on and use the proceeds from the Letter(s) of Credit filed for the Agreement to make such payment if payment is not provided as requested.

- 4.3 The Developer shall submit satisfactory evidence that the contractor is qualified, experienced and has the equipment to successfully complete the works.
- 4.4 The Developer shall ensure that the contractor's bond guarantees the completion of the works and the maintenance thereof for a period of one (1) year from the completion of such works.
- 4.5 The Developer shall employ a Professional Engineer, approved by the Director of Operations, to carry out the engineering services required herein to the Town design criteria and standards.
- 4.6 The Developer shall submit to the Niagara Peninsula Conservation Authority for its review and approval, detailed lot grading and drainage plans, noting both existing and proposed grades and the means whereby overland flows will be accommodated across the site as well as detailed sedimentation and erosion control plans.
- 4.7 The Developer shall submit to the Niagara Peninsula Conservation Authority for review and approval a copy of a detailed Stormwater Management Plan for the subdivision and the following plans designed and sealed by a suitably qualified Professional Engineer in accordance with the Ministry of the Environment documents entitled Stormwater Management Planning and Design Manual, March 2003 and Stormwater Quality Guidelines for New Development, May 1991:
 - 4.7.1 Detailed lot grading and drainage plans, noting both existing and proposed grades and the means whereby overland flows will be accommodated across the site;
 - 4.7.2 Detailed sediment and erosion control plans.

Note: A copy of the detailed Stormwater Management Plan for the subdivision should also be sent to the Niagara Region Development Services for information.
- 4.8 The Developer agrees to implement the approved stormwater management, erosion and sediment control measures required in accordance with the approved Stormwater Management Plan.
- 4.9 The Developer will submit detailed design drawings complete with calculations for the watermain system, the sanitary sewer system and the stormwater drainage system including fire hydrant locations required to

service the subdivision to the Town Operations Department and the Town Fire Department for review and approval. The detailed design drawings with calculations for the watermain system shall be submitted to the Town Operations Department and Fire Department for its review and approval and shall include required fire flows and existing system flows calculations.

- 4.10 The Developer shall ensure all sanitary sewer, watermain and storm sewer construction will be in accordance with current Town specifications and subject to approvals by the Ministry of Environment (MOE) and the Town Operations Department.
- 4.11 The Developer shall ensure all proposed infrastructure will be constructed to current Town specifications and subject to Town inspection at the Developer's expense.
- 4.12 The Developer shall submit a Residential Street Lighting Plan similar to existing phase for approval by the Town Operations Department.
- 4.13 The Developer's Engineer shall design all the works covered by the Agreement and further file with the Town a written undertaking, to the effect that he shall do all works, required of him, as per Schedule 'G' to this Agreement.
- 4.14 The Developer agrees that the Town at its discretion may retain the services of an independent Professional Engineer for the purposes of reviewing or approving or carrying out any of the work required pursuant to this Agreement, such engineer shall be paid out of and deducted from the monies held on deposit. Such fees shall be set in accordance with the Schedule of Fees for Consulting Engineer services recommended by the Association of Professional Engineers of Ontario on costs and as identified in Schedule 'F' attached.
- 4.15 The Developer will be required to post with the Town Letters of Credit and cash deposits relating to Primary, Secondary and Tertiary works, plan reviews, site inspections (based on working days), signs and barricades and road clean up prior to commencing the installation of any services. The amount of securities will be in accordance with the amounts detailed on Schedule 'F' attached.
- 4.16 The Developer shall provide Letter(s) of Credit which shall be in a form approved by the Town, and the Developer covenants and agrees that the Letter(s) of Credit shall be kept in full force and effect and that it will pay all premiums as the Letter(s) of Credit becomes due or until such time as the Town returns the Letter of Credit in accordance with this Agreement.
- 4.17 The Developer shall be responsible for all costs to construct a 1.5m concrete sidewalk along both sides of internal streets, if the side of the street is contiguous with Blocks 1 and 2 on Plan 30-12946, to the

satisfaction of the Town. The Developer will be required to deposit to the Town securities in the amount of 100% of the costs, as approved by the Director of Operations, associated with the installation of the internal sidewalks. These securities are to be released to the satisfaction of the Department of Operations, as follows 80% upon completion of the internal sidewalks and 20% after one year maintenance period.

- 4.18 The Developer agrees that all proposed laneways are to be private including maintenance of underground services and facilities as required.
- 4.19 The Developer shall ensure that the road and road entrance designs are constructed to current Town and Regional standards, if necessary, and approved by the Town Operations and Regional Public Works Department, if necessary.
- 4.20 The Developer shall post letters of credit or cash deposits with the Town for the subdivision or the first phase to provide security for the provision of the Primary, Secondary and Tertiary services necessary for the subdivision or the current phase thereof, based on the estimated cost of construction as follows:
 - 4.20.1 Primary Services-Letter of Credit equal to 20% of the estimated cost.
 - 4.20.2 Secondary Services-Letter of Credit equal to 100% of the estimated cost.
 - 4.20.3 Tertiary Services-Letter of Credit equal to 100% of the estimated cost.
- 4.21 The Developer hereby covenants and agrees that should there be a deficiency in or failure to carry out any work or matter required by any clause of this Agreement, whether or not such work or matter is specifically secured by way of letter of credit, and the Developer fails to comply, within thirty (30) days written notice, with a direction to carry out such work or matter, the Town may draw on the Letter(s) of Credit and enter onto the subject Lands and complete all outstanding works or matters, and pay all costs and expenses incurred thereby from the proceeds so drawn.
- 4.22 The Developer hereby covenants and agrees that the Town reserves the right to draw on and use the proceeds from the Letter(s) of Credit to complete any work or matter required to be done by the Developer pursuant to this Agreement.
- 4.23 The Developer further covenants and agrees that, notwithstanding Schedule 'F' to this Agreement, in the event that the Town determines that any reduction in the Letter(s) of Credit will create a shortfall with respect to securing the completion of any work or matter remaining to be carried out by the Developer pursuant to this Agreement, the Town will

not be obligated to reduce the Letter(s) of Credit as outlined in this Agreement until such time as such work is satisfactorily completed or the Town has sufficient security to ensure that such work will be completed.

- 4.24 The Developer agrees that wherever in this Agreement a Letter(s) of Credit is required to be filed with the Town, the Developer may deposit with the Treasurer, cash or a certified cheque to be cashed, in an amount equal to the Letter(s) of Credit and such deposit shall be held by the Town as security in accordance with this Agreement provided that no interest shall be payable on any such deposit.
- 4.25 The Developer acknowledges that upon the transfer of Ownership of any of the subject Lands to another Developer, the Town will not return any Letter(s) of Credit required under this Agreement until the new Owner files with the Town, substitute letters of credit in the required amounts.
- 4.26 The Developer shall provide the following information to the Town Operations Department in order that appropriate securities can be calculated:
 - 4.26.1 Cost of all on-site and off-site construction.
 - 4.26.2 Number of working days associated with the construction.
- 4.27 The Developer shall provide the required fire flows for the proposed development to the satisfaction of the Town Operations Department and the Town Fire Department. If required, the Developer agrees to construct any necessary system improvements in order to provide adequate water pressure and fire flows.
- 4.28 The Developer agrees to enter into a separate Development Agreement with Niagara-on-the-Lake Hydro for the provision of hydro services.
- 4.29 The Developer agrees to provide, at its own expense, centralized or area mailboxes within the development, the location to be subject to the approval of Canada Post and the Town of Niagara-on-the-Lake. The location of the temporary and/or permanent mailboxes shall be shown on the servicing plans.
- 4.30 The Developer agrees that he will not undertake any development on The Lands, save and except for "Conditional Permit" dwellings until such time as Primary Services are complete.
- 4.31 The Developer agrees, prior to commencing any demolition or the construction of underground services, to carry out a Stage 1 and 2 Archaeological Assessment of the subject property submitted to the Ministry of Culture for review and approval. Furthermore the Developer agrees that no grading or other soil disturbances take place on the subject property prior to the Ministry of Culture through the Niagara Region Development Services and the Town of Niagara-on-the-Lake confirming that all archaeological resource concerns have met licensing

and resource conservation requirements and that a copy of the Archaeological Assessment report be submitted to the Town Community and Development Services Department.

- 4.32 The Developer shall pay cash deposits, if required, to erect street name signs and regulatory signs (e.g. stop signs; no exit signs, street signs, unassumed road, etc) to be installed by the Town Operations Department in accordance with the amount detailed in Schedule 'F' attached.
- 4.33 The Developer shall ensure that all roadways can provide a through access and comply with the Regional Public Works Waste Collection standards in order to provide Regional curbside waste collection services.

5 CONSTRUCTION OF SERVICES

- 5.1 The Developer agrees to construct, and to pay the entire cost of such construction and materials required for all of the works referred to in this Agreement and schedules attached hereto, and in accordance with the conditions and specifications contained in such Schedule. All materials supplied shall be to the specifications and satisfaction of the Director of Operations.
- 5.2 The Developer shall ensure that during construction of the development the site will be kept in a reasonably tidy condition so that the raising of dirt and dust is kept to a minimum and further that all roads and sidewalks adjacent to and in the vicinity of the development are kept clean of mud and debris and that any standing water is eliminated. As such, the Developer shall pay to the Town a deposit as indicated in Schedule 'F' attached.
- 5.3 The Developer shall be held responsible for the general tidy appearance of the subdivision until assumption by the Town and shall carry out all weed, cutting and maintenance on all unsold Lands and all unassumed road allowances to the satisfaction of the Town.
- 5.4 The Developer shall pre-grade the subdivision such that all roads, lot corners, rear yard catch basins, swales, high points, and other features shown are in conformity with the approved 'General Grading Plan'.
- 5.5 The Developer shall construct at its expense the Primary Services for the proposed subdivision in accordance with the terms of Schedule 'C' attached hereto.
- 5.6 The Developer shall construct at its expense all Secondary Services necessary to service the proposed development in accordance with the terms of Schedule 'D' of this Agreement.
- 5.7 The Developer shall construct at its own expense all Tertiary Services necessary to service the proposed development in accordance with Schedule 'E' of this Agreement.

- 5.8 The Developer shall make satisfactory arrangements and where necessary enter into an Agreement, with the telephone company, and where applicable, the gas company and cable company for the installation of these utilities and similar arrangements with any other utility to be installed in the subdivision.
- 5.9 All utility services provided with respect to The Lands shall be underground.
- 5.10 The Developer shall, as directed by the Town Operations Department, ensure that watermains have passed applicable leakage and bacterial testing; sanitary sewer shall also be tested for infiltration and exfiltration. Sanitary and storm sewers shall be flushed and T.V. inspected, to the satisfaction of the Director of Operations.
- 5.11 Upon completion of the Primary Services to the satisfaction of the Director of Operations, the Director shall issue a Certificate of Completion of the Primary Services.

6 INSPECTION

- 6.1 The Developer's Engineer shall be responsible for the works outlined in Schedule 'G'.
- 6.2 The Developer shall provide the Town with 48 hours notice prior to inspection.
- 6.3 All underground infrastructure and public road construction shall be constructed to Town standards and inspected by the Town at the Developer's cost.

7 DEVELOPMENT CHARGES

- 7.1 The Owner agrees to pay to the Corporation of the Town of Niagara-on-the-Lake and the Region of Niagara, all applicable Development Charges in accordance with the current Municipal and Regional By-laws and policies at the time of building permit application.

8 CONDITIONS PRECEDENTS TO THE ISSUANCE OF A BUILDING PERMIT

- 8.1 Building permits shall not be issued until the following conditions are met:
 - 8.1.1 Completion of Primary Services for the relevant phase of development save and except for sidewalks which shall be installed immediately after the exterior work for each single-detached house, semi-detached house or block of townhouses is completed.
 - 8.1.2 The Developer/Builder agrees to provide a grading plan prepared by the design engineer in compliance with the approved 'General Grading Plan' to the Town for review and approval by the

Director of Operations. A cash deposit at the prevailing lot grading deposit rate is required to ensure final grading complies with the approved 'General Grading Plan'. The final grading shall be certified by the design engineer. The Plan will have regard for all the adjacent property elevations and drainage and provide elevations and notes for the following:

8.1.2.1 Lot corners

8.1.2.2 Apron elevations

- 8.1.3 Payment of all development charges, including all applicable Municipal and Regional development charges, due and payable at the prevailing rate.
- 8.1.4 Compliance with the Building Code Act.
- 8.1.5 Activation of hydrants for the relevant phase of development.
- 8.1.6 Installation of all applicable street and regulatory signs in the subdivision to the satisfaction of the Director of Operations.
- 8.1.7 Occupancy shall not be granted for any unit until the sidewalk is constructed the entire length of the lot or block of each single-detached dwelling, semi-detached dwelling or townhouse block. In the case of townhouse blocks, the sidewalk must be constructed for the entire townhouse block prior to occupancy being granted for the first unit.

- 8.2 Notwithstanding 8.1 above, a conditional Building Permit may be issued for the construction of dwellings, constituting not more than 3 dwelling units, provided that the dwellings cannot be occupied as a residence until Primary Services are provided and all conditions of the permit and this section have been met. It is acknowledged by the Developer that the conditional Building Permit for 3 units is issued pursuant to the Building Code Act and to the satisfaction of the Chief Building Official and the Director Community and Development Services. The conditional permit deposit required per lot or block shall be at the current applicable rate.

9 PARKLAND DEDICATION

- 9.1 The Developer is dedicating Block 2 on Plan 30R-12946 to the Town for parks purposes.

10 CONDITIONS PRECEDENT TO THE ASSUMPTION OF PRIMARY SERVICES AND RELEASE OF SECURITY

The Primary Services shall be assumed upon:

- 10.1 The expiration of one year from the later of issuance of the Certificate of Completion of Primary Services or the issuance of the first non-conditional Building Permit.
- 10.2 The Developer is responsible for, at its own expense and pending assumption by the Town, repairing and maintaining any works to the standards required by the plans and specifications to the satisfaction of the Director of Operations.
- 10.3 When written application for the assumption is received by the Director of Operations, the Town shall have thirty (30) days from the receipt of the request to carry out such inspections as it may consider necessary, and the payment of all financial requirements herein that are then due.
- 10.4 The payment of all financial requirements herein are received.
- 10.5 Upon satisfaction of the foregoing conditions the deposit or letter of credit for Primary Services or the amount thereof remaining shall be returned to the Developer.

11 CONDITIONS PRECEDENT TO THE ASSUMPTION OF SECONDARY SERVICES AND THE RELEASE OF SECURITIES

11.1 INSTALLATION

- 11.1.1 Secondary Services shall be installed within three (3) years from the date the first non-conditional Building Permit was issued for the subdivision or within thirty (30) days of the issuance of the building permit representing 50% plus one (1) of the homes in the subdivision. Where such date falls between, the 1st of December and 30th of April, then such services shall be completed by the following 30th of June. Upon completion to the satisfaction of the Director of Operations, a Certificate of Completion of Secondary Services will be issued.

11.2 REDUCTION OF LETTERS OF CREDIT

- 11.2.1 Forty-five (45) days after completion of the Secondary Services to the satisfaction of the Director of Operations, the Developer may apply to the Town and provided no construction liens are registered, the Director of Corporate Services will return the letters of credit for Secondary Services less any costs or expense incurred by the Town to the Developer and shall retain only 10% of the deposit.

11.3 ASSUMPTIONS AND RETURN OF DEPOSIT.

The Secondary Services shall be assumed upon:

- 11.3.1 The expiration of one (1) year from the certificate of the Director of Operations that all Secondary Services have been completed,

- 11.3.2 The completion of such repairs as may be required by the Town to bring the works to the standards set forth in the plans and specifications,
- 11.3.3 When written application for the assumption is received by the Director of Operations, the Town shall have thirty (30) days to carry out such inspections, and
- 11.3.4 The payment of all financial requirements herein are received.
- 11.3.5 Upon satisfaction of the foregoing conditions the deposit for Secondary Services or the amount remaining thereof shall be returned to the Developer.

12 PRECONDITIONS PRECEDENT TO THE ASSUMPTION OF TERTIARY SERVICES AND THE RELEASE OF SECURITY

12.1 INSTALLATION

- 12.1.1 Tertiary Services shall be installed for each lot within sixty days of the completion of the house upon the said lot or the occupancy of the house, whichever first occurs. Where the commencement date for the installation of Tertiary Services falls between the 1st of December and the 30th of April, the services shall be installed by the 30th of June next following. Upon completion of 25%, 50%, 75% and 100% of the Tertiary service to the satisfaction of the Director of Operations, he shall issue a Certificate of Completion of such percentage of the Tertiary Services.

12.2 REDUCTION OF LETTERS OF CREDIT

- 12.2.1 Forty-five (45) days after issuance of the certificate the completion of 25%, 50%, 75% and 100% of the Tertiary Services, the Developer may apply to the Director of Corporate Services and provided no construction liens are registered, the Town will return the letters of credit for the percentage of work that has been completed and shall retain only 10% of the deposit for such percentage as is completed but shall retain letters of credit and deposits for the remaining Tertiary work.

12.3 ASSUMPTION AND RETURN OF DEPOSIT

The Tertiary Services shall be assumed upon:

- 12.3.1 The expiration of one (1) year from the certificate of the Director of Operations that 100% of the Tertiary Services have been completed.
- 12.3.2 The completion of such repairs as may be required by the Town to bring the works to the standards set forth in the plans and specifications.

- 12.3.3 When the Director of Operations receives written application for the assumption, the Town shall have thirty days (30 days) to carry out such inspections.
- 12.3.4 The payment of all financial requirements herein are received.
- 12.3.5 The re-staking of all key points in the subdivision in accordance with the Surveys Act and Regulations thereunder.
- 12.3.6 The Developer's engineer certifying to the Director of Operations that the grading has been completed in accordance with the approved 'General Grading Plan'.
- 12.3.7 The Developer's engineer supplying the Director of Operations with a set of 'As Constructed Drawings' of all the works in a reproducible form satisfactory to the Director of Operations.
- 12.3.8 When all matters, works, services and things required to be constructed, installed, or done by the Developer shall, in the opinion of the Director of Operations, have been accomplished strictly in accordance with this Agreement and to the specifications and satisfaction of the Director of Operations, the Director of Operations shall issue to the parties hereto the Final Certificate of Approval.

13 RESTRICTIVE COVENANTS

- 13.1 Pursuant to the Planning Act, this Agreement shall be binding upon the Developer, their heirs, executors, administrators, assigns and successors in title and Developer from time to time of The Lands described in Schedule 'A' to this Agreement and any part or parts thereof and that the benefit of the same covenants shall enure to the Town, its successors and successors in title of all roads, streets and public lands forming part of or abutting on the said Lands described in Schedule 'A'. In particular the 'General Grading Plan' shall be maintained in perpetuity or at the discretion of Council.
- 13.2 It is agreed and understood that the Developer and the Town shall have the right to enter upon The Lands described in Schedule 'A' from time to time to undertake any drainage works which may be deemed necessary by the Director of Operations and or the Director of Community and Development Services in order to ensure compliance with the 'General Grading Plan'. In the event the Town finds it necessary to undertake any drainage works the cost of any such works performed by the Town, shall be paid by the Owner upon demand. It is agreed and understood that should the Town find it necessary to enter upon The Lands to undertake any drainage works that the Town shall proceed with reasonable care but

shall not be responsible for the final restoration of any property including fences, gardens, landscaping, etc.

- 13.3 The Developer agrees that there shall be no open burning of waste construction materials unless specifically approved by the Town Fire Department.
- 13.4 The Developer agrees not to damage or remove any survey evidence adjacent to road allowances and easements during the development of the property and that the owner obtain a certificate from an Ontario Land Surveyor, stating that all existing and new evidence is in place at the completion of the development.
- 13.5 The Developer agrees that all offers and agreements of purchase and sale shall contain a clause notifying Owners that all servicing and facilities located within the private laneways must be maintained by the adjacent land owners and if not maintained the Town has a right to inspect and carry out the necessary repairs and charge the property owners for the incurred expenses, which can be added to the tax bill.
- 13.6 The Developer include in all offers of purchase and sale, of those lots where the sidewalk location has been approved, a requirement that indicates that a sidewalk will be installed and constructed within the road allowance of such lot(s).
- 13.7 The Developer agrees to include a requirement in all offers to purchase and sale that the purchaser agrees to maintain the grassed boulevard.
- 13.8 The Developer agrees to include a requirement in all offers to purchase and sale that the purchaser agrees to keep the sidewalk directly in front of his lot clear from snow.
- 13.9 The Developer agrees that all offers and agreements of purchase and sale shall contain a clause notifying Owners that the general tidy appearance and maintenance of individual lots shall be the responsibility of the individual property Owner upon purchase of said lot.
- 13.10 That the Developer agrees to insert a clause registered on the title of those lots within the subdivision alerting future occupants that from time to time they may be subject to noise, spray, dust and odours of agricultural origin. The wording of this clause is to be satisfactory to the Town. Further, that the Developer insert into all offers and agreements of purchase and sale for the lots in the subdivision a clause alerting purchasers that on occasion they may be subject to noise, spray, dust and odours of agricultural origin.
- 13.11 The Developer will indemnify and save harmless the Town from and against all actions, causes of actions, interest, claims, demands, costs, charges, damages, expenses and loss which the Town may at any time bear, incur, be liable for, sustain or be put unto for any reason or, on

account of, or by reason of, or in the consequences related to the discharge of stormwater.

- 13.12 **WARNING CLAUSE:** An electrical distribution line operation at below 50,000 volts might be located within the area affected by this development or abutting this development. Section 186 - Proximity - of the Regulations for Construction Projects in the *Occupational Health and Safety Act*, requires that no object be brought closer than 3 metres (10 feet) to the energized conductor. It is the proponent's responsibility to be aware, and to make all personnel on site aware, that all equipment and personnel must come no closer than the distance specified in the Act. They should also be aware that the electrical conductors could raise or lower without warning, depending on the electrical demand placed on the line. Warnings signs should be posted on the wood poles supporting the conductors stating "DANGER-Overhead Electrical Wires" in all locations where personnel and construction vehicles might come in close proximity to the conductors.

14 DEFAULT

- 14.1 Upon breach by the Developer of any covenant, term, condition or requirement of this Agreement, the Town on forty-eight (48) hours notice to the Developer, or immediately in the event of an emergency, enter upon The Lands and remedy such breach and charge the cost thereof to the Developer.

15 SCHEDULES

- 15.1 The provisions of all schedules attached hereto shall form part of this Agreement.

16 ARBITRATION

- 16.1 If a dispute arises between the parties prior to notice of final default involving a material breach of covenant liability for any payment or other amounts claimed to be owing, by one party against the other, in substitution of any other remedy available to each party at law in equity or pursuant to this Agreement either party may submit the dispute to arbitration in the manner hereinafter set forth:

16.1.1 The party seeking arbitration shall give the other party written notice of the issue to be arbitrated, and the relief or remedy desired.

16.1.2 The party receiving the notice as above shall within three (3) working days thereof agree to the relief or remedy desired or failing

such agreement and within the three (3) working day period, respond in writing by naming an arbitrator.

16.1.3 Within three (3) working days, the party seeking arbitration shall name its arbitrator. Both arbitrators shall choose a third arbitrator within three (3) working days. If any one party fails to appoint an arbitrator in time, a single arbitrator shall conduct the arbitration.

16.1.4 The hearing to take place within three (3) working days of the appointment of the third arbitrator, or a single arbitrator becoming empowered by Clause (c). The arbitrators shall bring down their report within ten (10) working days of the hearing. The costs of arbitration shall be borne equally by the parties unless the arbitrators specifically award costs to either party.

16.1.5 The award or decision of the arbitrators shall be binding upon the parties hereto.

17 MORTGAGEES

17.1 The mortgagees, if any, hereby acknowledge the terms of this Agreement and agree that in the event it takes possession of the said Lands, or the interest of the Developer is vested in it, it and anyone acquiring title under it shall be required to comply with the terms of this Agreement to the same extent as if they had been the original Developer.

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 AS FOLLOWS:

To the Developer:

Traditional Neighbourhood Developments Inc.
42 Garrison Village Drive RR#3
Niagara-on-the-Lake, ON L0S 1J0

Attention: John R. Hawley, President

IN WITNESS WHEREOF the Developer has hereunder set their hand seal and Town has hereunto affixes its 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 Pat Darte

Town Clerk Holly Dowd

**TRADITIONAL NEIGHBOURHOOD
DEVELOPMENTS INC.**
per:

I, John R. Hawley, President, have the
authority to bind the corporation

**SCHEDULE A
LEGAL DESCRIPTION**

Part of Lot 205 on Plan M-11
Being Parts 2 & 4 on Reference Plan 30R-12946
Save and except Parts 1 & 3 on Reference Plan 30R-14373
Plan M-11 is confirmed by Plan 30BA179
Plan M-11 is not a Plan of Subdivision within the meaning of the *Planning Act*
(Ont)
Town of Niagara on the Lake
Regional Municipality of Niagara
In the Land Titles Division for Niagara North, No. 30, at St. Catharines

Being all of PIN: 46392-1027 (LT)

Roll No # Pending

All of which is shown on the draft Plan of Subdivision for Phase 3 of The Village,
West, prepared by William A. Mascoe Surveying Ltd. dated February 10, 2015.

SCHEDULE B
FINAL PLANS, LAND DEDICATIONS, EASEMENTS, AND RELATED
MATTERS

1. FINAL PLANS

The Final Plan means the draft Plan of Subdivision for “Phase 3 of The Village, West”, being part of Lot 205, Plan M-11 in the Town of Niagara-on-the-Lake prepared by William A. Mascoe Surveying Ltd. dated February 10, 2015 showing 12 single-detached residential Lots, 3 semi-detached residential Blocks, 1 Block for use as a laneway, 1 Block for Parks Dedication, Perez Road and Rampart Street.

2. LAND DEDICATIONS & EASEMENTS

NOTE: All Lands deeded to the Town shall be free and clear of any mortgages, liens, and encumbrances, to the satisfaction of the Town.

2.1 The Developer agrees to grant to the Town any required easements for services or utilities.

2.2 The Developer agrees to transfer and convey to the Town for parks dedication purposes Block 17 as shown on the draft Plan of Subdivision prepared by William A. Mascoe Surveying Ltd. dated February 10, 2015.

NOTE:

The Developer shall provide the deeds of conveyance along with confirmation of the partial discharge of any mortgagee or other encumbrance affecting The Lands being conveyed to the Town.

1. Conveying

- a) As the real property mentioned above to be conveyed to the municipal corporation may be more easily described in the conveyance by reference to a Registered Plan than by “metes and bounds”, we suggest that the description be so worded, and,
- b) We further suggest that the owner give to the municipality an undertaking to deposit with the Clerk a properly executed copy of the conveyance concurrent with the registration of the Plan.

2. Land Required to be Registered Under the Land Titles Act

- a) Section 160(1) of The Land Titles Act, which requires all new plans be registered in land titles system;
- b) Section 160(2) - allows certain exceptions.

SCHEDULE C
PRIMARY SERVICES

1. **ROADS**

- 1.1. All roads dedicated as public highways shall be constructed to urban design standards to the satisfaction of the Town and all in accordance with the engineering plans approved by the Town Operations Department.
- 1.2. The Developer shall maintain and repair temporary roadways until trench settlement has ceased and adequate compaction of the road sub grade has taken place to permit commencement of permanent pavement construction. In the interest of public safety, all roads shall be kept clear of obstructions and storage of construction materials.
- 1.3. All manhole tops shall be originally set level with the base course of asphalt.
- 1.4. Emergency access for fire protection purposes, turning radii and dead end roadways shall comply with the requirements of the Ontario Building Code Section 3.2.5.6.
- 1.5. That the centerline turning radius at all intersections are at least 12m.
- 1.6. The Developer is responsible to carry out and pay all costs of restoration of the existing roads from any damages resulting from the servicing and construction of the development.
- 1.7. That during the construction of the development the site will be kept in a reasonable tidy condition as that the raising of dirt and dust is kept to a minimum and further that all roads adjacent to and in the vicinity of the development are kept clean of mud and debris and that any standing water is eliminated.
- 1.8. Install concrete pads in accordance with the requirements of, and in locations to be approved by Canada Post.
- 1.9. Identify the concrete mail box pads on the engineering servicing drawings. The pads are to be poured at the time of the sidewalk and/or curb installation within each phase of the Plan of Subdivision.

2. **ELECTRICAL**

- 2.1. The Developer shall enter into a separate agreement with Hydro whereby the Developer agree to pay all necessary capital contributions towards the supply to the electrical system.
- 2.2. The Developer shall submit a residential Street Lighting Plan being similar to the existing phases for approval by the Town Operations Department. The Plan will consist of the design & installation of all lighting facilities, including lamp standards, conduits, lamps and control mechanisms in accordance with current TAC, Town, and Niagara-on-the-Lake Hydro standards. The type, number of lights, and their location including a lighting pattern from the manufacturer together with the estimated cost of the total installation must be approved by the Director of Operations.
- 2.3. The streetlights selected shall be led lights with the design and quality to be approved by the Director of Operations.

3. **SANITARY SEWER**

- 3.1. All sewers shall be installed in accordance with engineering plans approved by the Director of Operations. The sanitary sewer system shall meet the design criteria of the Regional Municipality of Niagara and the Ministry of Environment and Energy for domestic waste.
- 3.2. The pipe sizes selected shall have sufficient capacity to serve the ultimate drainage area in which the Subdivision is located and as designated or approved by the Director of Operations.
- 3.3. The Developer shall provide detailed calculations to the Director of Operations to confirm that there is adequate sanitary sewer capacity to service this development and the entire catchment area.
- 3.4. Domestic waste from any building constructed on any lot shall be discharged into the sanitary sewer system through a drain connected to the sanitary lateral servicing such lot.

4. PRIVATE DRAIN CONNECTIONS

- 4.1. The Developer shall construct individual service laterals (separate sanitary connections (laterals)) to each lot from the street sewer main to the street property line. The sanitary sewer lateral shall be a minimum 125 mm diameter PVC DR28 with proper waterproof plug fittings approved by the Director of Operations.
- 4.2. The ends of sanitary sewer laterals shall be marked with a wooden stake.

5. STORM SEWER AND STORMWATER MANAGEMENT SYSTEM

- 5.1. The storm sewer shall be designed to accommodate the runoff from the total catchment area and development drainage area, and all roof water, drainage from basement weeping tile and surface runoff from all roads and abutting properties. The rational method together with the Town rainfall chart and runoff coefficients shall be used to determine discharge capacity for 5-year return storm.
- 5.2. Concrete storm sewer pipe, or other approved type shall be used; minimum pipe size for storm sewer shall be 300 mm diameter, except where otherwise specified by the Director of Operations. Surface drainage shall be collected by means of catch basins as per the following detail. Maximum length of gutter flow shall be 90 meters.
- 5.3. Storm laterals will be provided for individual lots within the development. The sump pumps and roof leaders will discharge into the storm laterals.
- 5.4. Swales, if any, shall be sodded to ensure compliance with the lot grading plans.

NOTE

Water and Sewage Systems

Inauguration or extension of a piped water supply, a sewage system or a storm drainage system is subject to approval of the Ministry of the Environment under Section 52 and Section 53 of The Ontario Water Resources Act, R.S.O. 1990.

6. WATERMAINS

- 6.1. All watermains shall be installed in accordance with the engineering plans approved by the Director of Operations. The watermain system shall meet the design criteria of the Regional Municipality of Niagara and Ministry of Environment. All alterations, relocations or connections to the existing water system will be the responsibility of the Developer and shall be approved by the Director of Operations.

- 6.2. The Developer shall construct complete watermain system or systems and all necessary appurtenances, including hydrants, cathode protection and 19mm copper water service connections from the watermain to the lot line. The design shall be as approved by the Director of Operations and constructed in accordance with the approved specifications.
- 6.3. All watermains shall be a minimum 150 mm diameter or a sufficient size to service the subdivision and structures of this phase of development as well as future phases of development.
- 6.4. The Developer shall provide a metered 19 mm diameter copper water service to each lot.
- 6.5. The Developer shall submit supporting documentation to the Town Operations Department and Fire Department that the proposed water system design will deliver adequate water pressure and fire flows. If necessary, any water system improvements that must be undertaken to provide adequate water pressure and fire flows to this phase as well as future phases of development will be at the Developer's expense.
- 6.6. All hydrants and water flow must meet NFPA standards and the Ontario Building Code.
- 6.7. Where hydrants have been installed but not yet functional or out of service they shall be clearly identified (bagged) as to be not in service.
- 6.8. The Town Fire Department will be required to approve the number and location of all proposed fire hydrants.
- 6.9. All hydrants shall be free of obstructions after being activated.
- 6.10. Hydrants 'style' shall comply with the requirements of the Town Operations Department.

7. SIDEWALKS (Primary)

- 7.1. The Developer shall be responsible for all costs to construct a 1.5m concrete sidewalk along both sides of internal streets, if the side of the street is contiguous with Blocks 1 and 2 on Plan 30-12946, to the satisfaction of the Town Operations Department.
- 7.2. That the Developer agree not to damage or remove any survey evidence adjacent to road allowances and easements during the development of the property and shall obtain a certificate from an Ontario Land Surveyor stating that all existing and new evidence is in place at the completion of the development.

SCHEDULE D
SECONDARY SERVICES

1. 40 mm HL3 top coat of asphalt.
2. All manhole covers shall be raised to finished elevation prior to topcoat of asphalt.

SCHEDULE E
TERTIARY SERVICES

1 **BOULEVARDS:**

- 1.1 A minimum of 50 mm of topsoil shall be applied from the curb road to the property lines and shall be sodded.
- 1.2 The driveway area between the curb and/or property line, or the sidewalk as the case may be, shall be, at a minimum, asphalt paved or such other of materials to the satisfaction of the Director of Operations.
- 1.3 Tree planting shall be completed in consultation with the Town Operations Department.

2 **GENERAL**

- 2.1 The Developer shall be responsible for any damage caused to such watermains and appurtenances that may occur during construction of buildings and during the lot grading.

SCHEDULE 'F'
SECURITY DEPOSITS AND REQUIRED PAYMENTS

Item	Reference	Subject	Est. Cost	L of C	Cash
Prior to Signature:					
1.	3.1	No Tax Arrears @ January 28/15			N/A
2.	3.2	Local Improvement Charges			N/A
Total					\$0.00

Preconditions of the Construction of Services:					
1.	4.20.1.	Primary Services - 20%	\$1,180,244.58	\$ 236,048.92	
2.	4.20.2	Secondary Services -100%	\$71,975.00	\$71,975.00	
3.	4.20.3	Tertiary Services - 100%	\$16,000.00	\$16,000.00	
4.	4.15/6.2	Inspection 90 Days			\$58,500.00
5.	4.15	Engineering Plan Review			\$8,400.00
6.	4.17	Sidewalk – 100%		\$31,490.00	
7.	4.15	Signs			\$4,500.00
8.	5.3	Maintenance of Public Roads during construction			\$3,000.00 (return all or any unused portion)
Total			\$1,299,709.58	\$355,513.92	\$74,400.00
Prior to Issuance of Building Permit					
	8.1.2	Lot Grading Deposit			Prevailing lot grading deposit

NOTE:

- Separate agreement with Niagara-on-the-Lake Hydro and other utilities (i.e. Canada Post) may be required.
- Field Review Deposit based on 90 working days.

SCHEDULE “G”
ENGINEER’S UNDERTAKING OF WORKS

- 1) The Developer's engineer shall:
 - a) Design all the works covered by this Agreement and file with the Town a written undertaking:
 - i) That he has been engaged by the Developer to insure the works will be completed as required by this Agreement,
 - ii) That the work will be done in accordance with the approved contract drawings and specifications and all other provisions of this Agreement, and,
 - iii) That all phases of the work are subject to the approval of the Director of Operations.
 - b) Co-ordinate with the Town Inspector soil tests as may be required during construction.
 - c) Prepare a 'Stormwater Management Plan' and a 'General Grading Plan' for surface drainage of all Lands in the Plan of Subdivision, the said Plan to clearly indicate the existing drainage pattern on all adjacent lands and to provide for the direction of all surface drainage, including water from adjacent lands originally flowing through, into or over the area of the proposed subdivision, to the street storm sewer systems or any other outlet approved by the Director of Operations
 - d) The engineer shall from time to time provide the Town upon request with verification that the lot grading is in conformity with the General Grading Plan.
 - e) Prepare plans, profiles and specifications for the said works using the following guidelines:
 - i) Title block 13 cm x 8 cm to be placed in lower right hand corner and shall indicate nature of work.
 - ii) A complete copy of design details and calculations of storm and sanitary sewer designs which shall be based on design formula provided by the Town.
 - iii) Plan-profiles shall be fully detailed and where reference is made to other construction drawings, specific reference to those drawing numbers shall be made and shall be 60cm x 84cm.
 - iv) Horizontal ties shall be made to the property lines.
 - v) Levels shall be to datum and all field surveys shall be tied into geodetic benchmarks.
 - vi) As built construction plans to be electronic format (AutoCAD).
 - vii) Prepare applications to the necessary authorities and obtain approval for the works.