

**THE CORPORATION
OF THE TOWN
OF NIAGARA-ON-THE-LAKE
BY-LAW NO. #####-22**

26CD-18-20-02 - Second Mile Condominium,
Southeast Side of Niagara Stone Road,
part of Lot 218, Plan M-11, being Parts 2 & 3, 30R-13350,
Town of Niagara-on-the-Lake, Regional Municipality of Niagara

A BY-LAW TO AUTHORIZE A CONDOMINIUM AGREEMENT
BETWEEN THE CORPORATION OF THE TOWN OF NIAGARA-
ON-THE-LAKE AND HUMMEL PROPERTIES 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 26th day of September, 2022 between The Corporation of the Town of Niagara-on-the-Lake and Hummel Properties Inc. is hereby approved;
2. THAT the Lord Mayor and Town 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 26TH DAY OF
SEPTEMBER, 2022**

**_____
LORD MAYOR BETTY DISERO**

**_____
ACTING TOWN CLERK VICTORIA STEELE**

THIS INDENTURE made in triplicate this 26th day of September, 2022

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

AND: HUMMEL PROPERTIES INC.
(The "Owner")

WHEREAS the Owner warrants and represents that it is the registered Owner of the lands described in Schedule "A" attached hereto and forming part of this Agreement (the "Lands");

AND WHEREAS the Owner has made an application for a Condominium Agreement and Site Plan Approval to permit the construction of a vacant land condominium consisting of six (6) townhouse units and common areas for a private road, landscaping and environmental lands in accordance with approved Draft Plan of Vacant Land Condominium (File No. 26CD-18-20-02), prepared by Upper Canada Consultants dated November 3 2021, and the final plans listed in Schedule D attached hereto, all of which plans and design standards shall comply with the Ontario Building Code, and with all the Town building and Zoning By-law requirements;

AND WHEREAS the Town, as a condition of granting such approval, has imposed certain conditions upon the Owner to be carried out to the satisfaction of the Town;

AND WHEREAS this Agreement is entered into pursuant to the authority conferred by Section 41 and Section 51(25) of the Planning Act, R.S.O. 1990, Chapter P. 13, as amended, for the purpose of fulfilling the said conditions and obtaining such approval;

AND WHEREAS the Owner agrees to be bound by and to fulfil the obligations and conditions imposed on the Owner of the Lands;

AND WHEREAS THE COUNCIL of the Corporation of the Town of Niagara-on- the-Lake has adopted this Agreement and authorized its execution by By-law No. #####-22 passed by the Corporation of the Town of Niagara-on-the-Lake on the 26th day of September, 2022;

NOW THEREFORE THIS AGREEMENT WITNESSES that the parties hereto, in consideration of the premises and the sum of One Dollar (\$1.00) of lawful money of Canada now paid by each of the said parties to the other (the receipt and sufficiency of which is hereby acknowledged), covenant and agree as follows:

1. DEFINITIONS

- 1.1. **'Acceptance or Accept'** means the Works that have been accepted by the Town in accordance with an Assumption By-law.
- 1.2. **'Agreement'** means this Development Agreement.
- 1.3. **'Approved Plans'** shall mean plans approved and signed by the Lord Mayor and Town Clerk of the Corporation of the Town of Niagara-on-the-Lake and Owner depicting the proposed development. **Schedule B** of this agreement is a reduced copy of the Approved Plan on file with the Community and Development Services Department of the Town of Niagara-on-the-Lake.
- 1.4. **'Assume or Assumption'** means the Town's acceptance of the Works to be constructed in accordance with this Agreement, as evidenced by a by-law of Council of the Town, whereby such Works vest in the Town and the Owner has no right, title or interest therein.
- 1.5. **'Assumption By-law'** means a by-law passed by the Town accepting the Works to be constructed herein, whereby such Works vest in the Town and the Owner has no right, title or interest therein.
- 1.6. **'Chief Building Official'** shall mean the Chief Building Officer of the Corporation of the Town of Niagara-on-the-Lake or their designate.
- 1.7. **'Common Elements'** means all the property in the condominium plan except the units.
- 1.8. **'Council'** shall mean the Council of the Corporation of the Town of Niagara-on-the-Lake.
- 1.9. **'Director of Community & Development Services'** shall mean the Director of Community and Development Services of the Corporation of the Town of Niagara-on-the-Lake or their designate.
- 1.10. **'Director of Corporate Services'** shall mean the Director of Corporate Services of the Corporation of the Town of Niagara-on-the-Lake or their designate.
- 1.11. **'Director of Operations'** shall mean the Director of Operations of the Corporation of the Town of Niagara-on-the-Lake or their designate.
- 1.12. **'Final Plan'** shall mean a Plan prepared at the request of the Owner 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 purpose of this agreement.
- 1.13. **'Fire Chief'** shall mean the Fire Chief of the Corporation of the Town of Niagara-on-the-Lake or their designate.
- 1.14. **'Individual Lot Grading Plan'** means a drawing showing grades, swales, and drainage patterns and may include catch basins and floor heights in relation to grades on an individual Lot/Block to the satisfaction of Chief Building Official.
- 1.15. **'Lands'** shall mean the lands as described in **Schedule A** attached hereto.
- 1.16. **'Letter of Credit'** means a standby municipal, irrevocable letter of credit issued by a major chartered bank or credit union, posted with the Town pursuant to the terms of this Agreement.
- 1.17. **'Off-Site Works'** means all Works to be constructed off the lands described in **Schedule A** to this agreement.
- 1.18. **'On-Site Works'** means all Works to be constructed on the lands described in **Schedule A** to this agreement.

- 1.19. **'Overall Grading Plan'** means a drawing showing grades, swales, and drainage patterns and may include catch basins and floor heights in relation to grades of the overall Subdivision development to the satisfaction of Director of Operations.
- 1.20. **'Preliminary Certificate of Completion of Primary Services'** means the certificate issued by the Director of Operations upon satisfactory completion of all Primary Services prior to commencement of the maintenance period.
- 1.21. **'Preliminary Certificate of Completion of Secondary Services'** means the certificate issued by the Director of Operations upon satisfactory completion of all Secondary Services prior to commencement of the maintenance period.
- 1.22. **'Primary Services'** means road signs, public utilities, street lighting, watermains, sewers, both sanitary and storm, and any pumping station, emergency accesses, community mail box pads, catch basins or other appurtenances, the base road including base asphalt, curbs and gutters, regulatory signs, lot pre-grading including Sodded Swales and retaining walls, and fencing.
- 1.23. **'Region'** shall mean the Corporation of the Regional Municipality of Niagara.
- 1.24. **'Required Plans'** means all of the plans and specifications for all of the works and matters required to be designed, installed, and done by the Developer by way of this Agreement for the Condominium and development of the Lands, including without limiting the generality of the forgoing, servicing plans, street lighting plans, landscape and fencing plans, which include the plans for the noise attenuation works and which shall be completed by a qualified landscape architect, 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, e.g., 'required street lighting plans'.
- 1.25. **'Secondary Services'** means all Works to be installed, constructed or erected which are not defined as Primary Services or Public Utilities. Included as a Secondary Service is the cleaning of any storm water management storage chambers, pond and/or stormceptor. All Storm Ponds shall be cleaned out and silt removed to the original approved design elevations prior to the assumption by the Town.
- 1.26. **'Sodded Swales'** means the installation of sod within drainage swales which collect storm water runoff from multiple lots, or townhouse units, and does not include swales located between individual lots or townhouse blocks unless the Town has required a drainage easement in that location.
- 1.27. **'Surveyor'** shall mean an Ontario Land Surveyor.
- 1.28. **'Town'** shall mean the Corporation of the Town of Niagara-on-the-Lake.
- 1.29. **'Works'** shall mean and include all Primary and Secondary Services and any and all works, services, things, actions and other matters without limitation required to be completed or performed by the Owner pursuant to this Agreement.

2. PRECONDITIONS TO THE TOWN CONSENTING TO THE FINAL APPROVAL OF THE PLAN OF CONDOMINIUM

- 2.1. The Owner agrees that if final approval is not given to this plan within three (3) years of the draft approval date and no extensions have been granted, draft approval shall lapse. If the owner wishes an extension to the draft approval, a written explanation with reasons why the extension is required, must be received by the Town prior to the lapsing date.
- 2.2. The Owner shall enter into one or more agreements with the Town agreeing to satisfy all requirements, financial and otherwise, of the Town including the provisions of services, roads, signage, grading, drainage, streetlighting, and sidewalks. The agreement shall also specifically prohibit development on the lands, save and except for model homes until such time as sanitary sewers can be adequately provided.
- 2.3. The Owner agrees that this Agreement between the Owner and the Town shall be registered by the Town against the lands to which it applies, pursuant to the provisions of the *Planning Act*.
- 2.4. The owner agrees that any outstanding taxes will be paid prior to the registration of the final plan.
- 2.5. The Owner shall pay cash-in-lieu of parkland dedication pursuant to Section 51.1 of the *Planning Act* R.S.O. 1990, c. P13). The calculated amount of cash-in-lieu of parkland shall be based on the value of the land, as of the day before the approval of the Plan of Vacant Land Condominium.
- 2.6. The Owner agrees to address fire flows requirements and any deficiencies and to construct the necessary system improvements to provide adequate water pressure and fire flows to the proposed development to the satisfaction of the Town's Operations Department and Fire and Emergency Services prior to any approvals.
- 2.7. The Owner agrees that all sanitary sewer, watermain, and storm sewer construction shall be in accordance with current Town Specifications and submitted to the Town's Operations Department for Approvals.
- 2.8. The Owner agrees that all proposed infrastructure works shall be constructed as per approved plans, to current Town specifications and subject to Town inspection at the Owner's expense including qualitative and quantitative tests made of any materials used in the construction of any works.
- 2.9. The Owner agrees that all services, facilities and any structures within the private roads and/or required for the development shall be constructed prior to the registration of the condominium corporation unless the municipality accepts security for the completion of these works.
- 2.10. The Owner shall provide a written acknowledgement to the Region Planning and Development Services Department stating that draft approval of this condominium does not include a commitment of servicing allocation by the Region as servicing allocation will not be assigned until the plan is registered and that any pre-servicing will be at the sole risk and responsibility of the Owner.
- 2.11. The Owner shall provide a written undertaking to the Region Planning and Development Services Department stating that all Offers and Agreements of Purchase and Sale or Lease which may be negotiated prior to the registration of this condominium, shall contain a clause that servicing allocation for the condominium will not be assigned until the plan is granted final approval for registration.
- 2.12. The Owner shall include the following warning clauses in all Agreements of Purchase and Sale or Lease or Occupancy for each dwelling unit:

"These lands are in proximity to lands designated for agricultural uses. The lands may be subject to noise, odour and/or dust from nearby agricultural operations, which may interfere with some activities of the dwelling occupants."

“The servicing allocation for the condominium will not be assigned until the plan is registered.”

- 2.13. The Owner agrees that the private road within the development shall be named to the satisfaction of the Town, in accordance with the Town’s Municipal Street Naming Policy.
- 2.14. The Owner shall identify all required easements that may be required for the on-site water, sanitary sewer, stormwater management and lot grading systems and grant any required easements for service or utilities to the Town.

3. PREPARATION AND SUBMISSION OF PLANS

- 3.1. The Owner acknowledges and agrees that:
 - (a) Landscaping of the private road, appropriate landscape buffering and/or screening of adjacent residential development, streetscape plan, proposed dwelling elevations and other landscaping deemed appropriate shall be completed and forever maintained to the satisfaction of the Director of Community and Development Services and in accordance with the Plans identified in **Schedule D** to this Agreement;
 - (b) Any required Architectural Plans will be in accordance with the Town's Building By-law and requirements of the Ontario Building Code;
 - (c) Any required Overall Grading and Servicing Plan will be in accordance with the Town’s current Municipal Engineering Standards and sealed by an appropriately qualified design professional to the satisfaction of the Director of Operations;
 - (d) An Ontario Land Surveyor shall prepare any Land Survey required by this Agreement;
 - (e) All construction plans and supporting reports may be subject to a peer review at the Owner’s cost;
 - (f) A street lighting design/plan shall be submitted to the Town’s Operations Department for approval and constructed to Town standards.
 - (g) An Overall Grading Plan shall be prepared in accordance with Town’s standards and shall be submitted for the approval of the Operations Department prior to the passing of the Town’s By-law authorizing the execution of this Agreement.
 - (h) The Owner shall submit, at the time of building permit application, Individual Lot Grading Plans prepared in accordance with the approved Overall Grading Plan to the Satisfaction of Chief Building Official. The Individual Lot Grading Plans shall provide that the maximum height of the concrete showing on the foundation walls of buildings shall not be more than 30.48 cm (12 inches) above the final approved grade elevations, and all construction shall be in accordance with the approved Overall Grading Plan.
 - (i) A streetscape plan of the internal streets illustrating the location of on-street parking, street trees, pavement markings, community mailbox locations, hydrants, regulatory and no parking signs and street lighting is submitted to the Town’s Operations Department and Community and Development Services for review and approval.
- 3.2. The Owner agrees to submit detailed design drawings for the water, sanitary sewer and stormwater drainage systems required to service this development to the Regional Development Services Division, the Town’s Operations Department and the Town’s Fire and Emergency services Department for review and approval.

- 3.3. It is the Owner's responsibility to ensure that all plans and development indicated thereon is in accordance with the requirements of all applicable laws, by-laws, codes, rules and regulations.
- 3.4. All plans required by this Agreement shall be submitted by the Owner and must be approved by the Town prior to the passing of the Town By-law authorizing the execution of this agreement.
- 3.5. The Owner represents and warrants to the Town that no deviations or changes shall be made to the approved plans and/or drawings and no construction shall take place contrary to such plans and drawings without the prior written approval of the Town.
- 3.6. The Owner agrees to identify the concrete pads for Community Mail Boxes on engineering servicing drawings. Said pads are to be poured at the time of the sidewalk and/or curb installation within each phase of the plan of condominium.
- 3.7. The Owner agrees to determine the location of all centralized mail receiving facilities in co-operation with Canada Post and to indicate the locations of the centralized mail facilities on appropriate maps, information boards and plans. Maps are also to be prominently displayed in the sales office(s) showing specific Centralized Mail Facility Locations.

4. CONDITIONS PRECEDENT TO THE ISSUANCE OF A BUILDING PERMIT

- 4.1. The Owner acknowledges and agrees that where construction of all Works contemplated by the Agreement has not commenced within six months of the issuance of a Building Permit, or where construction is substantially suspended or discontinued for a period of more than one year after the issuance, the Building Permit may be revoked by the Chief Building Official. The Chief Building Official will not review or issue another Building Permit or other permit required by this Agreement until such time as the Owner has submitted and has received approval of a new development agreement relating to the Lands reflecting the latest standards and policies required by the Town.
- 4.2. The Owner acknowledges and agrees that neither the Owner, or any person under its authority shall apply for the issuance of any Building Permit to construct any building or structure contemplated by this Agreement and that the Chief Building Official shall be under no obligation to issue a Building Permit on the Lands until:
 - (a) This Agreement has been fully executed and registered on title.
 - (b) Such plans, which in the opinion of the Director of Community and Development Services are necessary for the development of the Lands, have been approved in writing by the said Director.
 - (c) Completion of Primary Services for the applicable phase to the satisfaction of the Director of Operations.
 - (d) The registration of the Condominium Plan.
 - (e) Compliance with Building Code Act.
 - (f) The Owner/Developer/Builder shall submit an Individual Lot Grading Plan prepared by the design Engineer in compliance with the approved 'Overall Lot Grading Plan' to the satisfaction of the Chief Building Official. A cash deposit at the prevailing lot grading deposit rate is required to ensure final grading complies with the approved 'Overall Lot Grading Plan'. The final grading shall be certified by the design engineer.
 - (g) Activation of hydrants for the applicable phase of development.
 - (h) Any required Grading and Servicing Plan has been submitted to and approved by the Director of Operations prior to the passing of the Town By-law authorizing the execution of this agreement.

- (i) The Owner has obtained all necessary approvals from any government agency having an interest in the development.
 - (j) Any municipal taxes that are in arrears have been paid in full.
 - (k) An Entrance Work Permit has been obtained from the Town's Operations Department, or if applicable, the Regional Operations Department, allowing driveway connections to the street. The Owner further agrees to construct the entrance to the satisfaction of the governing agency prior to the issuance of any Building Permit.
 - (l) A Utility Installation Permit has been obtained from the Town's Operations Department, or if applicable, the Regional Operations Department, allowing connections to the services within the street. The Owner further agrees to construct the utilities to the satisfaction of the governing agency prior to the issuance of any occupancy permit.
 - (m) Any and all required easements have been provided to the Town and/or other applicable agencies having jurisdiction.
 - (n) The Town has received the required Security as outlined in **Section 16** of this Agreement.
 - (o) All required development charges have been paid to the Town and the Region.
 - (p) All required cash-in-lieu of parkland dedication has been paid to the Town.
 - (q) All dedications and grants of lands to the Town have been affected and registered, as required by this Agreement.
- 4.3. Notwithstanding **Subsection 4.2** above, a conditional Building Permit may be issued for 1 unit, provided that the dwellings can neither be sold nor occupied as a residence until Primary Services, including the placement of base course asphalt, are provided and all conditions of the issuance of the permit and this section have been met. It is acknowledged by the Developer that the Conditional Building Permit is issued pursuant to the Building Code Act and to the satisfaction of the Chief Building Official and Director of Community and Development Services. The Conditional Building Permit deposit shall be at the rate applicable at the time of the issuance.

5. BUILDINGS, CONSTRUCTION AND OCCUPANCY

- 5.1. The Owner agrees that any buildings and/or structures and/or services on the Lands will be constructed entirely in accordance with:
- (a) Any plans and drawings related to the proposed buildings and/or or structures and/or services that may be approved by the Town;
 - (b) The provisions of the Ontario Building Code, the Town's Building By-law and the requirements of the Chief Building Official;
 - (c) The requirements of the Zoning By-law of the Town;
 - (d) The requirements of this Agreement; and,
 - (e) Any applicable statute, regulation or code of any other authority having jurisdiction.
- 5.2. The Owner agrees not to perform any construction or installation or works whatsoever on the Lands except in accordance with the terms and conditions contained in this Agreement unless otherwise agreed to and approved, in writing, by the Director of Community and Development Services.
- 5.3. The Owner shall not construct or install private servicing until the Director of Operations, and any other government agency having jurisdiction in the matter, has formally approved such work.

- 5.4. In accordance with the Town's Street Cleaning Policy, the Owner shall provide its own road cleaning of the Lands, including internal roadways, internal driveways, walkways and parking areas and shall keep all such areas free and clear of snow, mud, debris and obstructions (including motor vehicles) at all times in order to provide access for, ambulance, fire, police and utility vehicles.
- 5.5. The Owner shall not, and shall not permit any other person to, occupy or use any portion of any building or structure on the Lands without first receiving an Occupancy Permit from the Town.
- 5.6. The Owner agrees to work with Canada Post to determine and provide temporary suitable Centralized Mail Box locations which may be utilized by Canada Post until the curbs, boulevards and sidewalks are in place in the remainder of the Condominium.
- 5.7. The Owner agrees to install a concrete pad in accordance with the requirements of and in locations to be approved by Canada Post to facilitate the placement of Community Mail Boxes.

6. STORMWATER MANAGEMENT

- 6.1. Prior to the passing of the Town By-law authorizing the execution of this agreement, the Owner shall submit servicing plans for approval and, at its own expense, construct such works as may be required to collect and contain all stormwater on site and channel such stormwater to an approved outlet in accordance with specifications and plans approved by the Director of Operations and filed in the office of the Director of Operations. In this paragraph, stormwater shall include all surface water on the land including roof run-off, eavestroughs, surface catch basins and water from the foundation perimeter-weeping tile.
- 6.2. Any alteration or improvements to the existing services will be at the Owner's expense.
- 6.3. The Owner agrees, at its own expense, to undertake, to repair, forever maintain, and, where necessary, replace any stormwater system located on the lands identified in **Schedule A** hereto attached.
- 6.4. Where the stormwater system has not been maintained, the Director of Operations or designate may enter upon the lands after reasonable notice having been given to the Owner, and affect such repairs as are deemed necessary and that all such repairs shall be at the Owner's expense.
- 6.5. Prior to approval of the final plan or any on-site grading or storm servicing, the Owner shall submit a detailed stormwater management plan and all associated engineering drawings (stamped and signed by a qualified professional engineer) in accordance with the Ministry of the Environment, Conservation and Parks documents entitled 'Stormwater Management Planning and Design Manual' (March 2003) and Stormwater Quality Guidelines for New Development (May 1991), or their successors, to the Niagara Region Planning and Development Services Department for review and approval.
- 6.6. The owner agrees to submit a stormwater management study to Niagara Region Planning and Development Services for review and approval. The study shall ensure that site stormwater run-off does not negatively impact upon the Region's road allowance and that post-development flows do not exceed pre-development flows (in quantity and quality).
- 6.7. The Owner agrees to implement the approved stormwater management plan and stormwater management study identified in **section 6.5** and **section 6.6** respectively.

7. STORM AND SANITARY SERVICES

- 7.1. Prior to the passing of the Town's By-law authorizing the execution of this Agreement, the Owner shall submit servicing plans for approval and, at its own expense, construct

- such storm and sanitary services as may be required to service the approved development.
- 7.2. Any alteration or improvements to the existing services will be at the Owner's expense.
 - 7.3. The Owner shall supply the Director of Operations with the Town's standard service cards showing the location and depth of each sanitary sewer lateral and storm sewer lateral constructed to serve the buildings which are to be erected on the Lands.
 - 7.4. Upon completion of the Primary Services, the Owner shall have all storm sewer and sanitary sewer systems cleaned and flushed to the satisfaction of the Director of Operations.
 - 7.5. Prior to the placement of the base course asphalt, the Owner shall be responsible for carrying out an in-line inspection of all storm sewer and sanitary sewer systems by television as directed by the Director of Operations, and the reports and videos thereof shall be provided to the Town. In the event that results are not, in the opinion of the Director of Operations, satisfactory, then the Owner shall take such remedial steps including re-televising the repairs as may, in the opinion of the Director of Operations, be required.
 - 7.6. Prior to the placement of the base course asphalt, the Owner shall have all storm and sanitary sewer systems tested either by infiltration or by exfiltration and the method of testing shall be in the sole direction of the Director of Operations.
 - 7.7. Prior to the placement of the base course asphalt, the Owner shall have all sanitary sewer and storm sewer systems, which have been constructed using flexible piping mandrel tested to the satisfaction of the Director of Operations.
 - 7.8. Prior to the placement of the topcoat asphalt and prior to the issuance of the Final Certificate of Completion of Services, the Owner shall have all sanitary sewers and storm sewers cleaned and flushed and carry out an in-line television inspection of all sanitary sewers and storm sewers, to the satisfaction of the Director of Operations.
 - 7.9. The Owner agrees to undertake, at its own expense, to repair, forever maintain, and, where necessary, replace any storm sewer and sanitary sewer systems located on the lands identified in **Schedule A** hereto attached.

8. WATER SERVICES

- 8.1. The Owner shall install and forever maintain all necessary connections to existing internal water supply services necessary to serve the development, such construction to be in accordance with specifications and plans approved by the Director of Operations and the Fire Chief.
- 8.2. Any alteration or improvements to the existing services will be at the Owner's expense and subject to approval of the Director of Operations.
- 8.3. The Owner agrees that the internal private watermain system be metered in a chamber at the property line before entering the condominium corporation lands. The Condominium corporation will be responsible for the difference between the amount of metered water entering the development and the total amount of water individually billed to each unit on an annual basis.
- 8.4. The owner agrees that each unit within the condominium corporation will have its own individual water meter.
- 8.5. The Owner agrees that the private internal water system will be subject to annual inspections and maintenance by the Operations Department and that the costs associated with those inspections and maintenance will be borne by the condominium corporation.

- 8.6. The Owner agrees to install any required fire hydrants in accordance with the Ontario Building Code and the Town of Niagara-on-the-Lake Municipal Engineering Standards.
- 8.7. The Owner agrees to ensure that fire hydrants within the development shall be kept clear and free of any obstructions, which may interfere with access to fire hydrants, for a 5-foot radius around any fire hydrant, to the satisfaction of Fire Department.
- 8.8. All fire hydrant protection identified in this agreement shall be in working order and capable of being utilized prior to commencement of above ground construction.
- 8.9. Where fire hydrants have been installed but are not yet functional or are out of service, the hydrant shall be clearly identified (bagged) as to be not in service.
- 8.10. The Owner agrees, at its own expense, to undertake, to repair, forever maintain, and, where necessary, replace any water distribution system located on the lands identified in **Schedule A** hereto attached.
- 8.11. Where the water distribution system has not been maintained, the Director of Operations or designate may enter upon the lands after reasonable notice having been given to the Owner, and affect such repairs as are deemed necessary and that all such repairs shall be at the Owner's expense.

9. PARKING AND ROADWAY

- 9.1. The Owner shall, at its own expense, and at all times maintain on the said lands, parking spaces, in accordance with the drawings in **Schedule D** attached hereto and to specifications and a design approved by the Director of Community and Development Services, prior to the issuance of a building permit. The surface treatment of all parking areas shall be as indicated on the drawings in **Schedule D** attached hereto.
- 9.2. The Owner agrees that parking will be prohibited on the private roadways and that appropriate signage will be installed.

10. ROADS AND ENTRANCEWAYS

- 10.1. The final design of all road access driveways and entranceways shall be subject to the approval of the Director of Operations.
- 10.2. All roads, entranceways and the emergency access route must conform to the requirements of the Fire Chief and meet Ontario Building Code Standards.
- 10.3. The Owner agrees to maintain all access and interior driveways year-round including removing snow and/or sanding to the satisfaction of the Fire Chief. All snow removal and snow storage shall be contained within the development and the condominium corporation will not plow snow into the municipal and/or Regional Road allowance.
- 10.4. The Owner agrees that all proposed laneways and roadways are to be private, including the maintenance of underground services as required.
- 10.5. The Owner agrees that the private road and private road entrance designs are to be constructed to current Town and Region standards and to be approved by the Town and Region of Niagara.
- 10.6. The Owner agrees that the centreline radius of all intersections in the development shall meet the Fire Department, Ontario Building Code requirements and Regional requirements (if applicable) for waste collection and emergency access.

11. SIDEWALKS

- 11.1. The Owner shall install sidewalks in accordance with the Town's Sidewalk Installation Policy for new developments (P-CDS-16-003). The taking and release of securities for sidewalks shall be in accordance with the Town's Sidewalk Installation Policy (P-CDS-16-003). Securities for sidewalks shall be deposited with the Town prior to execution of this Agreement by the Town. For greater certainty, in regards to

sidewalks only, in the event of any conflict between the terms of this Agreement and the Town's Sidewalk installation Policy (P-CDS-16-003), the Town's Sidewalk Installation Policy shall prevail.

12. LIGHTING/FLOODLIGHTING

- 12.1. Any changes to the approved site lighting or additional lighting of the building or site will require that the Owner submit a lighting plan for review and approval by the Director of Operations or his designate prior to the passing of the Town's By-law authorizing the execution of this Agreement.

13. NOISE ATTENUATION

- 13.1. The Owner agrees that all external air conditioners, ventilation systems, exhaust fans or other similar mechanical equipment are directed away from abutting properties and screened from view or otherwise located on the subject lands so as to attenuate noise impact on neighbouring residential properties to the satisfaction of the Director of Community and Development Services.
- 13.2. The owner agrees to implement the recommendations of the Environmental Noise Feasibility Study prepared by Valcoustics Canada Ltd, dated November 21, 2018, and the addendum letter dated February 11, 2021 based on the Site Plan prepared by Upper Canada Planning and Engineering Ltd, dated November 11, 2020.
- 13.3. The Owner agrees to include the following warning clause in all Agreements of Purchase and Sale or Lease or Occupancy for each of the dwelling units:

"Purchasers/tenants are advised that despite the inclusion of noise control features in the development and within the building units, sound levels due to increasing road traffic may occasionally interfere with some activities of the dwelling occupants as the sound level may exceed the noise criteria of the municipality and/or the Ministry of the Environment, Conservation and Parks.

This dwelling unit has been designed with the provision for adding central air conditioning at the occupant's discretion. Installation of central air conditioning by the occupant in low and medium density developments will allow windows and exterior doors to remain closed, thereby ensuring that the indoor sound levels are within the noise criteria of the municipality and/or the Ministry of the Environment, Conservation and Parks.

Purchasers/occupants are advised that due to the proximity of the existing community centre/library building, restaurant and winery, sound from these facilities may, at times, be audible."

14. GARBAGE DISPOSAL & STORAGE

- 14.1. The Owner shall, at all times, provide adequate facilities for the collection and disposal of garbage, sanitary refuse and commercial waste in accordance with Provincial legislation, Regional Policy and Municipal By-law, and in the event of its failing so to do, the Town or its agents shall have the right to enter upon the said lands and, at the expense of the Owner, undertake the collection and disposal and recover the costs thereof by action or in like manner as municipal taxes.
- 14.2. The storage, collection and disposal of refuse, garbage and waste in the development shall be so conducted as to create no health hazards, rodent harbourage, insect breeding areas, accident, fire hazards or pollution. This responsibility will rest entirely on the Owner.
- 14.3. All refuse, garbage and waste must be stored in waterproof, vermin proof, and covered containers.
- 14.4. The owner agrees that

- a. During the construction of services or other works being undertaken on the lands the Owner agrees that should waste, materials or other contaminants be discovered that the Ministry of the Environment, the Regional Municipality of Niagara and the Town of Niagara-on-the-Lake shall be notified by the Owner.
- b. The Owner will indemnify and save harmless the Town from and against all actions, causes of actions, interest, claims, demands, costs, charges, damages, expenses and loss.

15. SIGNAGE

- 15.1. The Owner agrees that any signage located on the subject lands shall be in accordance with the approval of the Director of Community and Development Services and in compliance with the Town's Sign By-law and Ontario Building Code.
- 15.2. 'No parking' signage for fire routes and emergency access routes shall be placed along the private driveways. The owners will be responsible for the purchase and installation of all regulatory and street signs

16. ENGINEERING, LEGAL AND INSPECTION COSTS

- 16.1. The Owner agrees to deposit with the Town, prior to the construction of services, and keep in full force and effect until completion of all on-site and off-site construction and services set out herein, an irrevocable letter of credit or security deposit in the amount of 100% of the cost estimates provided for on-site and off-site services, as set out in **Schedule C** to this Agreement, which include underground servicing, roads, parking, landscaping, fencing, grading and similar elements as per the approved plans to ensure the completion of all Common Elements, that all terms of this agreement are fulfilled and that the site is left in a safe and tidy condition.
- 16.2. All works shall be designed and constructed in accordance with relevant Town policies and standards, and in accordance with all applicable Ministry of the Environment and Climate Change guidelines.
- 16.3. The Owner agrees, at the Owner's expense, to provide full-time competent field supervision of the construction of the works as described in **Section 16.5** of this Agreement to the satisfaction of the Director of Operations Department.
- 16.4. Upon completion of all works, the Owner shall ensure that all works are tested as deemed appropriate by the Town, at the Owner's sole expense, which may include but not be limited to the swabbing, flushing, pressure testing, chlorination, and bacterial testing of watermains, compaction testing, concrete strength testing, and any other tests as the Town, or its designate may deem appropriate.
- 16.5. The Owner's Engineer shall, as part of the submission of engineering plans, submit construction cost estimates, and number of working days for the construction of the following off-site and on-site services in writing, for the approval of the Director of Operations as applicable:
 - a) Sanitary and storm sewers and appurtenances
 - b) Water service and appurtenances
 - c) Pavements, including granular base, sidewalks and curbing (including off-site servicing)
 - d) Stormwater management
 - e) Landscaping/Lighting
- 16.6. The Owner shall pay a cash deposit as set out in **Schedule C** to this Agreement, representing the actual cost of inspections for Primary Services and Secondary Services prior to the passing of the Town By-law authorizing the execution of this agreement, which is based on the following criteria:

- a) The estimated cost of the inspection fees shall be based on the estimated number of working days and the daily inspection costs as established by the Director of Operations.
 - b) The actual inspection fees shall be based on the actual number of working days and the daily inspection cost as established by the Director of Operations.
- 16.7. The Developer shall pay a cash deposit as set out in **Schedule C** to this Agreement, to 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 adjacent to and in the vicinity of the development are kept clean of mud and debris and that any standing water is eliminated.
- 16.8. The Developer shall pay a cash deposit as set out in **Schedule C** to this Agreement, against the cost of reparations to any off-site damages that may occur during construction, the actual cost of such reparations to be at the Owner's sole expense.
- 17. RELEASE OF SECURITIES – OFF-SITE WORKS**
- 17.1. Upon completion of the Off-Site Works, the Owner shall provide the Town with written confirmation from the Owner's consulting engineer confirming that the Off-Site Works have been constructed in conformance with the approved plans and designs.
- 17.2. Upon completion of the Primary Services to the satisfaction of the Town, the Town will issue a Preliminary Certificate of Completion of Primary Services.
- 17.3. The Owner shall supply the Town with a set of the "as-constructed" final drawings in a PDF and AutoCAD format of all the off-site works, to the satisfaction of the Director of Operations at the time of the completion of the Primary Services.
- 17.4. Upon completion of a one-year maintenance period following the issuance of the Preliminary Certificate of Completion of Primary Services, the Owner may submit a written request for release of securities for Primary Services. Upon receipt of a written request for release of securities for Primary Services, and subject to the Town completing an inspection to confirm the services are to the Town's satisfaction, the Town will issue a full release of securities for Primary Services.
- 17.5. Upon completion of the Secondary Services to the satisfaction of the Town, the Town will issue a Preliminary Certificate of Completion of Secondary Services.
- 17.6. Upon completion of a one-year maintenance period following the issuance of the Preliminary Certificate of Completion of Secondary Services, the Owner may submit a written request for release of securities for Secondary Services. Upon receipt of a written request for release of securities for Secondary Services, and subject to the Town completing an inspection to confirm the services are to the Town's satisfaction, the Town will issue a full release of securities for Secondary Services.
- 18. RELEASE OF SECURITIES – ON-SITE WORKS**
- 18.1. Upon completion of the On-Site Works, the Owner shall provide the Town with written confirmation from the Owner's consulting engineer confirming that the On-Site Works have been constructed in conformance with the approved plans and designs.
- 18.2. The Owner shall supply the Town with a set of the "as-constructed" final drawings (grading and servicing) in a PDF and AutoCAD format of all the on-site works, to the satisfaction of the Director of Operations prior to the full release of securities.
- 18.3. The Owner shall submit to the Town, records of inspection of on-site works as per the Town's inspection record template, to the satisfaction of the Director of Operations.
- 18.4. Following the submission to the Town of the written confirmation prescribed in **Section 18.1** of this agreement, the Owner may submit a written request for a reduction or full release of securities for On-Site Works. Upon the receipt of a written

request for reduction or release of securities for On-site Works, and subject to the Town completing an inspection to confirm the works are to the Town's satisfaction, the Town will proceed with the reduction or release of securities.

19. DEVELOPMENT CHARGES

- 19.1. The Owner agrees to pay to the Corporation of the Town of Niagara-on-the-Lake, all applicable Development Charges in accordance with the current Town and Regional by-laws and policies, prior to the issuance of Building Permit.

20. GRADING

- 20.1. Prior to the passing of the Town By-law authorizing the execution of this Agreement, the Owner shall submit an Overall Grading Plan, engineering details and design for approval by the Director of Operations.
- 20.2. The Owner agrees to construct and grade the lands in accordance with the approved plans certified by and filed in the office of the Director of Operations.
- 20.3. The Overall Grading Plan, which shall require grades to be established and maintained within the development, will ensure proper drainage without interference with or flooding of adjacent properties, and will retain all stormwater as required under **Section 6**, Stormwater Management, of this agreement. Any deviation from such grades shall constitute a violation of this agreement.
- 20.4. Any change to the Overall Grading Plan certified and approved pursuant to this agreement will require the submission of revised drawings prepared by an Ontario Land Surveyor or Professional Engineer and approved by the Director of Operations. The Owner will be responsible for all costs associated with any resubmission and re-approval of the grading plans.
- 20.5. Unless otherwise approved or required by the Director of Community and Development Services, the Owner agrees not to undertake any site alteration of the said lands until such time as a building permit is issued for the construction of the buildings contemplated herein on the said lands. The Owner agrees not to remove any soil or permit any site alteration of the Lands without first obtaining written approval from the Director of Community and Development Services. The Owner further acknowledges that there is a Site Alteration By-law in effect in the Town with which the Owner must apply.

21. ARCHAEOLOGICAL ASSESSMENT

- 21.1. Should deeply buried archaeological remains/resources be found on the property during construction activities, all activities impacting archaeological resources must cease immediately, and the Owner must notify the Archaeology Programs Unit of the Ontario Ministry of Heritage, Sport, Tourism and Culture Industries (416-212-8886) and contact a licensed archaeologist to carry out an archaeological assessment in accordance with the Ontario Heritage Act and the Standards and Guidelines for Consultant Archaeologists.

In the event that human remains are encountered during construction, all activities must cease immediately and the local police as well as the Cemeteries Regulation Unit of the Ministry of Government and Consumer Services in Toronto (416-326-8800) must be contacted. In situations where human remains are associated with archaeological resources, the Ministry of Heritage, Sport, Tourism and Culture Industries should also be notified to ensure that the site is not subject to unlicensed alterations which would be a contravention of the Ontario Heritage Act.

22. GENERAL

- 22.1. The extent of the construction shall be clearly identified on site (preferably using visible construction fence) prior to any site alteration, and no equipment, machinery or materials shall extend beyond the project area.

- 22.2. Prior to construction, the owner shall submit a site alteration and sediment control plan to the Town's Operations Department for approval. All erosion control measures (i.e. silt fence, straw bales, silt curtain) shall be installed and maintained in a good condition until all disturbed areas have been vegetated and stabilized with native materials to a pre-disturbed state or better.
- 22.3. If, in the opinion of the Town, the sediment and erosion control measures are not functioning properly, no further work shall continue until the sediment and/or erosion problem is addressed, to the satisfaction of the Town.
- 22.4. Construction shall be limited to the proposed area depicted on the approved drawings included in **Schedule D**.
- 22.5. The Owner agrees to implement mitigation measures as described in the Environmental Impact Study (EIS) and EIS Addendums prepared by Beacon Environmental Limited (dated December 2013, September 21, 2018, and May 3, 2021, respectively), including but not limited to:
- a) That vegetation removals be undertaken between October 1st and March 14th, outside of both the breeding bird nesting period and active bat season. A survey for active bird nests should be conducted prior to any vegetation removal or site alteration planned to occur during this window.
 - b) That permanent fencing be provided adjacent to the natural heritage features, to the satisfaction of the Niagara Region. A no-gate bylaw is recommended to reduce human encroachment and limit the movement of pets into the adjacent natural areas.
 - c) That any security lighting to be installed on buildings should be directed away from natural areas to minimize ambient light exposure to the adjacent natural areas.
 - d) That excavation and construction work be designed and staged to ensure that no encroachment into the 15 m buffer lands is required.
- 22.6. The Owner agrees that all infrastructure within the development is private and owned and maintained by the condominium corporation.
- 22.7. All disturbed areas shall be reinstated immediately upon completion of the proposed works.
- 22.8. The Owner agrees that during the construction of the development site that 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 adjacent to and in the vicinity of the development are kept clean of mud and debris as per Town's Street Cleaning Policy for new developments (Policy CDS-PLG- 005).
- 22.9. As per the Town's Street Cleaning Policy, all streets abutting the Lands, or used for access to the Lands during the installation or construction of the Works, or during the construction of dwellings upon the Lots shall, at all times, be kept by the Owner in a good, clean and usable condition and, if damaged or littered, shall be restored immediately to the Town's satisfaction.
- 22.10. The Owner shall ensure that all trucks making deliveries to or taking materials from the Lands shall be adequately covered and not unreasonably loaded so as to scatter refuse, rubbish, dust or debris on abutting streets or properties.
- 22.11. If required under the Ontario Building Code, the Owner shall provide land surveys by an Ontario Land Surveyor, and ensure that all construction shall be carried out under the direction of such architect or engineer. Evidence of this direction and control must be submitted to the Chief Building Official, prior to the issuance of a building permit.
- 22.12. The Owner shall not call into question directly or indirectly in any proceedings whatsoever in law or in equity or before any administrative tribunal the right of the Town to enter into this agreement and to enforce each and every term, covenant and condition herein contained and this agreement may be pleaded as an estoppel

- against the Owner in any such proceedings. Each of the terms of this agreement is independent of the other and in the event any term of this agreement is held to be invalid or unenforceable for any reason, then such invalidity or unenforceability shall affect that term only and the remainder of the agreement shall remain in full force and effect.
- 22.13. In the event of failure of the Owner to carry out any of the provisions of this agreement, then the municipality, its servants, or agents shall, on fifteen (15) days' notice in writing of its intention so to do and forthwith in cases or emergency, have the right to enter on to the said lands and, at the expense of the Owner, do any work required hereby and further, shall have the right to recover the costs thereof by action or as municipal taxes, pursuant to the provisions of the Municipal Act, R.S.O. 2001.
- 22.14. The Owner agrees that all work authorized by this agreement shall be completed within two (2) years of the date of the execution of this agreement. If all work has not been completed within two (2) years from the date of execution of this agreement, the Town reserves the right to deem this agreement may become null and void.
- 22.15. The Owner shall indemnify and save harmless the Town from and against all actions, causes of action, 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 consequence of, related to the discharge of stormwater from the lands.
- 22.16. In case the Owner wishes not to pay for the connection to and/or extension to an existing communication/telecommunication infrastructure, the Owner shall be required to demonstrate to the municipality that sufficient alternative communication/telecommunication facilities are available within the proposed site to enable, at a minimum, the efficient delivery of communication/telecommunication services for emergency management services (i.e. 911 Emergency service).
- 22.17. The Owner shall obtain a certificate from an Ontario Land Surveyor stating that all existing and new evidence is in place at the completion of the said development.
- 22.18. The Owner shall contact Enbridge Gas Distribution's Customer Connections department for service and meter installation details and to ensure all gas piping is installed prior to the commencement of site landscaping (including, but not limited to: tree planting, silva cells, and/or soil trenches) and/or asphalt paving.
- 22.19. If the future gas main needs to be relocated as a result of changes in alignment or grade of the future road allowances or for temporary gas pipe installations pertaining to phase construction, all costs are the responsibility of the Owner.
- 22.20. Easement(s) are required to service this development and any future adjacent developments. The Owner will provide all easement(s) to Enbridge Gas Distribution at no cost.
- 22.21. In the event a pressure reducing regulator station is required, the Owner is to provide a three (3) metre by three (3) metre exclusive use location that cannot project into the municipal road allowance. The final size and location of the regulator station will be confirmed by Enbridge Gas Distribution's Customer Connections department.
- 22.22. The Owner will grade all road allowances to as close to final elevation as possible, provide necessary field survey information and all approved municipal road cross sections, identifying all utility locations prior to the installation of the gas piping.
- 22.23. The Owner shall grant to Bell Canada any easements that may be required, which may include a blanket easement, for communication/telecommunication infrastructure. In the event of any conflict with existing Bell Canada facilities or easements, the Owner shall be responsible for the relocation of such facilities or easement.
- 22.24. The Owner shall include on all offers of purchase and sale a statement that advises the prospective purchaser that the home/business mail delivery will be from a designated Centralized Mail Box

- 22.25. The Owner shall include on all offers of purchase and sale a statement that advises the prospective purchaser that the developers/owners are responsible for officially notifying the purchasers of the exact Centralized Mail Box locations prior to the closing of any home sales.
- 22.26. Prior to the registration of the final plan, the Owner agrees to pay any arrears of taxes outstanding against the lands.
- 22.27. Prior to the release of any securities, the Owner agrees to pay any arrears of taxes outstanding against the lands.
- 22.28. The Owner agrees that there shall be no open burning of waste or construction materials unless specifically approved by the Fire Chief.
- 22.29. The Owner shall enter into separate agreements for the provision of utilities to service the development, including; gas, telephone and cable, as required.
- 22.30. The Owner shall be subject to all by-laws of the Town and shall abide by them.
- 22.31. This agreement shall enure to the benefit of and be binding upon the parties hereto and their heirs, executors, administrators, successors, mortgagees and assigns and all covenants, agreements, conditions and understandings herein contained on the part of the Owner shall run with the lands and it shall ensure to the benefit of the lands of the Town and it shall be binding upon the Owner and its successors and assigns as Owners or occupiers of the lands from time to time.
- 22.32. The Owner herein agrees and consents to the registration of this agreement, at its own expense, against the title of the said lands.

Any notice given hereunder shall be sufficiently given and addressed to:

HUMMEL PROPERTIES INC.

P.O. Box 612

IN WITNESS WHEREOF the parties hereto have hereunto affixed their corporate seals under the hands of their officers duly authorized in that behalf.

**SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:**

**THE CORPORATION OF THE TOWN OF
NIAGARA-ON-THE-LAKE**

LORD MAYOR: BETTY DISERO

ACTING TOWN CLERK: VICTORIA STEELE

Witnessed by:

OWNER: Hummel Properties Inc.

Signature

Signature

Name: Rainer Hummel

Position: Owner
I have the authority to bind the corporation

SCHEDULE "A"
TO A DEVELOPMENT AGREEMENT BETWEEN
HUMMEL PROPERTIES INC.
AND
THE CORPORATION OF THE TOWN OF NIAGARA-ON-THE-LAKE

DESCRIPTION OF SUBJECT LANDS

Part of Lot 218, Registered Plan M-11, being Parts 2 & 3, 30R-13350,
Town of Niagara-on-the-Lake, Regional Municipality of Niagara

SCHEDULE "B"
TO A DEVELOPMENT AGREEMENT BETWEEN
HUMMEL PROPERTIES INC.
AND
THE CORPORATION OF THE TOWN OF NIAGARA-ON-THE-LAKE

DRAFT APPROVED OR REGISTERED PLAN OF CONDOMINIUM

SCHEDULE "C"
TO A DEVELOPMENT AGREEMENT BETWEEN
HUMMEL PROPERTIES INC.
AND
THE CORPORATION OF THE TOWN OF NIAGARA-ON-THE-LAKE

SECURITY DEPOSITS AND REQUIRED PAYMENTS

Item	Reference	Subject	Est. Cost	L of C	Cash
Prior to Signature					
1.		Tax Arrears			
Prior to Construction					
2.		On-site Works -100%	\$493,033.13	\$493,033.13	
3.		Off-site Works – Primary Services 100%	\$121,508.90	\$121,508.90	
		Off-site Works – Secondary Services 100%	\$24,362.80	\$24,362.80	
4.		Inspection			\$19,500.00
5.		Road Cleaning			\$2,000.00
6.		Off-site Damages			\$2,000.00
7.		Parkland Dedication (Cash-in-Lieu)			\$43,440.00
Total					

**SCHEDULE “D”
LIST OF ENGINEERING DRAWINGS
TO A DEVELOPMENT AGREEMENT BETWEEN
HUMMEL PROPERTIES INC.
AND
THE CORPORATION OF THE TOWN OF NIAGARA-ON-THE-LAKE**

APPROVED PLANS AND DRAWINGS

The following is a list of the plans identified by drawing numbers and descriptions that are located in the office of the Operations Department of the Town:

DRAWING NO.	DESCRIPTION	DATE OF PLAN
1308-SERV	Servicing Plan	2022-08-12
1308-GP	Site Grading & Siltation Control Plan	2022-08-12
1308-PP1	Watermain Extension + Private Sanitary Forcemain Plan and Profile	2022-08-12
1308-STMDA	Storm Drainage Area Plan	2022-08-12
1308-STR	Streetscaping Plan	2022-08-12
SL-1	Private Streetlight System	2022-08-02
PHOTO-2	Photometric Analysis	2022-08-02
L1	Landscape Plan	2022-07-18
L2	Landscape Plan Details	2022-07-18
A1 & A2	Units 1, 2, 3 Elevations	2022-05-16
A3 & A4	Units 4, 5, 6 Elevations	2022-05-16