

**Properties**

PIN

46373 – 0362    LT

☒ Redescription

Description

LOTS 1 TO 39 INCLUSIVE AND BLOCKS 40–44 INCLUSIVE, PLAN 30M–354  
NIAGARA–ON–THE–LAKE

Address

NIAGARA–ON–THE–LAKE

**Applicant(s)**

The notice is based on or affects    a valid and existing estate, right, interest or equity in land.

Name

ORCHARD GLEN GARDEN FRESH TRADITIONS INC.

Address for Service

126 Creek Road South  
ST. DAVID'S, Ontario L0S 1P0

I, Bryce Ivanchuk, Vice–President, have the authority to bind the corporation.  
This document is not authorized    under Power of Attorney by this party.

Party To(s)	Capacity	Share
<div><div><div>Name</div><div>THE CORPORATION OF THE TOWN OF NIAGARA–ON–THE–LAKE</div></div><div><div>Address for Service</div><div>1593 Four Mile Creek Road P.O. Box 100 VIRGIL, Ontario L0S 1T0</div></div></div>		

**Statements**

This notice is for an indeterminate period

Schedule:    See Schedules

**Signed By**

John Anthony Cleworth	15 Bold Street Hamilton L8P 1T3	acting for Applicant(s)	Signed	2006 02 10
Tel        9057771136				
Fax        9057771140				
Monica Evelyn Wolfe	39 Queen St. P.O. Box 24022 St. Catharines L2R 7P7	acting for Party To(s)	Signed	2006 02 10
Tel        9056881125				
Fax        9056885725				

**Submitted By**

DANIEL & PARTNERS LLP	39 Queen St. P.O. Box 24022 St. Catharines L2R 7P7	2006 02 10
Tel        9056881125		
Fax        9056885725		

**Fees/Taxes/Payment**

Statutory Registration Fee	\$60.00
Total Paid	\$60.00

**File Number**

Applicant Client File Number :

507900

Party To Client File Number :

26T–18–04–01

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

**BY-LAW NO. 3962-05**

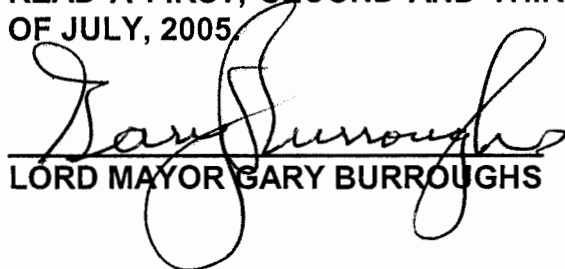
*Part of Lots 91 & 92 and Part of the Original Road Allowance between Lots 91 & 92  
Apricot Glen Estates Subdivision, Roll # 25-10020*

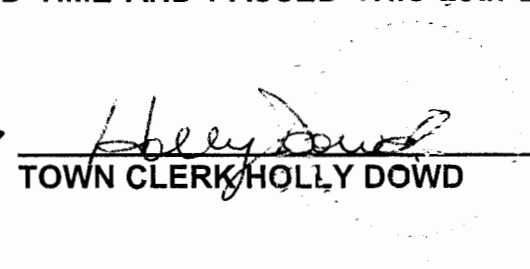
**A BY-LAW TO AUTHORIZE A SUBDIVISION AGREEMENT  
BETWEEN THE CORPORATION OF THE TOWN OF NIAGARA-  
ON-THE-LAKE AND ORCHARD GLEN GARDEN FRESH  
TRADITIONS INC.**

**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 25<sup>TH</sup> day of July, 2005 between the Corporation of the Town of Niagara-on-the-Lake and Orchard Glen Garden Fresh Traditions Inc. be and the same is hereby approved.
2. THAT the Lord Mayor and Clerk be authorized to affix their hands and the Corporate Seal thereto.
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 25th DAY  
OF JULY, 2005.**

  
LORD MAYOR GARY BURROUGHS

  
TOWN CLERK HOLLY DOWD

THIS INDENTURE made in triplicate this 25<sup>th</sup> day of July, 2005.

BETWEEN:

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

OF THE FIRST PART,

-and-

**ORCHARD GLEN GARDEN FRESH TRADITIONS INC.**  
(hereinafter called the 'Owners')

OF THE SECOND PART,

-and-

**THE EFFORT TRUST COMPANY**  
(hereinafter called the 'Mortgagee')

OF THE THIRD PART,

**WHEREAS** the Owners purport to be the Owners of the lands in the Town of Niagara-on-the-Lake described in Schedule 'A' attached hereto and have applied, or propose to apply to the Town of Niagara-on-the-Lake for approval of a subdivider's agreement for the purpose of registering the same in the Land Titles Office for Niagara North;

**AND WHEREAS** the Town requires the Owners, before final approval of the proposed subdivider's agreement, to agree 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.

**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 Owner to the Town (the receipt thereof is hereby acknowledged), the Parties hereto mutually covenant and agree as follows:

**1. DEFINITIONS**

In this Agreement:

- 1.1 'Certificate of Completion of Primary, (Secondary), (Tertiary)' means the certificate for primary, (secondary), (tertiary) services issued by the Director of Public Works, acting reasonably, upon being satisfied that the primary, (secondary), (tertiary) services have been completed.
- 1.2 'Final Certificate of Approval' means the certificate issued by the Director of Public Works, 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.

- 1.3 '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.
- 1.4 '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, and the base road including base asphalt, curbs gutters, telephone, lot pre-grading and, where applicable, gas mains and cable T.V.
- 1.5 'Secondary Services' means top coat of asphalt and any services not included in 'Primary' or 'Tertiary Services'.
- 1.6 '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 and connection of utilities and meters.
- 1.7 'Surveyor' means an Ontario Land Surveyor.
- 1.8 'Final Plan' means 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 purposes of this agreement.

**2. ORGANIZATION OF AN AGREEMENT**

- 2.1 This subdivision may proceed in phases in which case the terms of this Agreement will be read as applying to each such phase.

**3. PRECONDITIONS TO THE SIGNATURE OF THE AGREEMENT BY THE TOWN**

- 3.1 The Owner shall:
  - (a) pay all arrears of taxes and all taxes for the current year in respect to the property described in Schedule 'A',
  - (b) commute and pay all local improvement charges and charges in accordance with the Municipal Act R.S.O. 2001, the Tile Drainage Act or any other special levy or charge against the property, save and except development charges,
  - (c) submit a Final Plan of Subdivision (or phase) for approval and pay the Town the required fee for the registration of the final plan and this agreement. Subsequent phases of development will be accommodated by amendment to this agreement,

- (d) prepare cost estimates for the construction of all Primary, Secondary and Tertiary off-site and on-site services upon which the calculation for inspections, letters of credit and security deposits shall be based,
  - (e) complete the conveyance, free of all encumbrances, of all lands and easements required for the Subdivision or if the Subdivision is to be constructed in phases, such conveyances and easements necessary for that phase.
- 3.2 The Owner shall comply with all conditions of the Subdivider's Agreement, which are hereby referentially incorporated.
- 3.3 If final approval is not given to the plan within 3 (three) years of the draft approval date and no extensions have been granted, draft approval shall lapse. In order for an extension to be granted, the Owner must make a written request to the Town explaining the reasons an extension is required. The request for extension of draft approval must be received by the Town prior to the lapsing date.
- 3.4 The Town shall register this agreement against the title of all the lands and provide a registered copy to the Owner.
- 3.5 The Owner shall pay to the Town cash in the amount of 5% of the appraised value of the lands described in Schedule 'A' to satisfy the requirement for Parks Dedication pursuant to Section 42 (1) of the Planning Act and as detailed in Schedule 'F' attached hereto.

#### **4. PRECONDITIONS FOR CONSTRUCTION OF SERVICES**

Before any work is commenced:

- 4.1 The Owner 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 Owners, contractors, servants or agents.
- 4.2 The Owner shall supply the Town with a copy of All Perils and Liability Insurance in the amount of \$5,000,000 naming the Town as an additional insured, said policy shall specifically refer to all work to be undertaken by the Owner or its agents on public road allowances.
- 4.3 The Owner shall submit satisfactory evidence that the contractor is qualified, experienced and has the equipment to successfully complete the works.

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- 4.4 The Owner 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 Owner shall employ a professional engineer, approved by the Director of Public Works, to carry out the engineering services required herein to the Town's design criteria and standards. The plans and specifications shall be signed by the Director of Public Works.
- 4.6 The Owner'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 Owners to supervise the work and will complete the work 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 Public Works.
  - (b) Conduct such soil tests as may be required by the Director of Public Works.
  - (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 Public Works
  - (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) tracings shall be plan profile mylar 60cm x 84 cm sheets and ink lettering,
    - (ii) title block 13 cm x 8 cm to be placed in lower right hand corner and shall indicate nature of work, location limits and scales

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- (iii) 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,
  - (iv) plan-profiles shall be fully detailed and where reference is made to other construction drawings, specific reference to those drawing numbers shall be made,
  - (v) horizontal ties shall be made to the property lines,
  - (vi) levels shall be to datum and all field surveys shall be tied into Geodetic bench marks,
  - (vii) as built construction plans on mylar sheets and electronic disc format (AutoCad)
- (f) Prepare applications to the necessary authorities and obtain approval for the works.
- 4.7 The Owner 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 as identified in Schedule 'F' attached.
- 4.8 The Owner shall deposit with the Town a cash amount to cover the estimated cost of plan review including the "General Grading Plan" and inspection by the Town in accordance with Sections 4.7 and 6.2, respectively as identified in Schedule "F" of this agreement attached hereto.
- 4.9 The Owner herein agrees to obtain the necessary Ministry of Environment Certificates of Approval for the servicing of the development subject to the satisfaction of the Town's Department of Public Work.

NOTE: Where a new stormwater outlet or detention/retention facility is proposed, the design of the facility should be submitted directly to the Ministry of the Environment for approval and the issuance of a Certificate of Approval.

- 4.10 The Owner agrees to submit to the Regional Planning and Development Department, the Niagara Peninsula Conservation Authority and the Town's Public Works Department for review and approval a detailed stormwater management and site grading and drainage plan for the subdivision, completed in accordance the Ministry of the Environment documents entitled, Stormwater Management Practices, Planning and Design Manual, March 2003 and Stormwater Quality Guidelines for New Development, May 1991, as amended endorsed by a qualified Professional Engineer. A copy of the stormwater management report shall be submitted to the Niagara Peninsula Conservation Authority for its review and response to the Regional Planning and Development Department, which is the clearance agency for this condition. And furthermore the Owner agrees to implement the approved stormwater management plan which shall include the following:
- (a) Information on the manner in which upstream flows will be handled.
  - (b) Information on how the stormwater outlet that is to run across private lands will be secured and maintained.
  - (c) The detailed design for the stormwater outlet to the Four Mile Creek.
  - (d) Detailed lot grading and drainage plans.
  - (e) Detailed sediment and erosion control plans.
  - (f) Redline revisions to the subdivision, if necessary, to implement other aspects of the approved stormwater management plan.
- 4.11 The Owner agrees to enter into a separate development agreement with Niagara-on-the-Lake Hydro for the provision of hydro services.
- 4.12 The Owner agrees to submit the detailed designs and drawings for the watermain system, the sanitary sewer system and the storm water management system required to service this proposal to the Regional Public Works Department, the Town Public Works Department and the Town Fire Department for their review and approval.
- 4.13 The Owner agrees to install, at its own expense, centralized mailboxes within the municipal road allowance, the locations to be subject to the approval of Canada Post and the Director of Planning and Development Services, and the Director of Public Works.



- 4.14 Prior to any construction taking place within a Regional Road Allowance, the Owner agrees to obtain a Regional Construction Encroachment and/or Entrance Permit from the Regional Public Works Department.
- 4.15 The Owner agrees to submit to the Regional Planning and Development Department a Phase I Environmental Site Assessment (ESA) verifying the history of agricultural use on the property with respect to the storage and mixing of pesticides and the filling of sprayers. If any portion of the property has been used in this manner, a Phase II ESA with soil testing of the affected area(s) shall be prepared by a qualified consultant and submitted to the Regional Planning and Development Department for review and approval. Copies of the ESA should also be submitted to the Town of Niagara-on-the-Lake and the Ministry of the Environment for their information. If site remediation should be required to Ministry of Environment guidelines for residential use, a record of Site Condition (RSC) acknowledged by the Ministry of Environment shall be obtained and submitted to the Regional Planning and Development Department and to the Town of Niagara-on-the-Lake.
- 4.16 The Owner shall conduct an archeological assessment of the subject property and mitigate any adverse impacts to any significant archeological resources found through preservation or resource removal and documentation. No grading or other soil disturbances shall take place until the Town of Niagara-on-the-Lake, the Regional Planning Department and the Ministry of Culture have confirmed that all archeological resource concerns have met licensing and resource conservation requirements and that a copy of the Archeological Assessment report be submitted to the Town's Planning and Development Services Department.
- 4.17 The Owner agrees to submit a Noise Impact Study to the Regional Planning and Development Department for review and approval, prepared by a qualified consultant in accordance with the Ministry of the Environment Guideline entitled Noise Assessment Criteria in Land Use Planning, October 1997, as amended. The Owner further agrees to implement any relevant recommendations of the study.

- 4.18 The Owner shall secure a 6 metre wide easement to the benefit of the Town to serve as a temporary secondary access for emergency purposes through Lot 31 and through the adjacent lands of the existing Orchard Glen Market to Four Mile Creek Road to the satisfaction of the Town Fire Department and the Director of Public Works, subject to the following:
- (a) Lot 31 will be held in escrow by the Town until further road connections are available through the lands to the south to the satisfaction of the Town, at which time the temporary access can be removed.
  - (b) That the emergency access route is kept accessible and passable at all times by the Owner.
  - (c) That the emergency access route is built to meet or exceed all applicable code requirements.
  - (d) That the centerline radius of the emergency access is a minimum of 12 metres.
- 4.19 The Owner agrees to provide a temporary road connection between Streets "B" and "C" (Bunny Glen Drive and Red Haven Drive) across Lots 11 and 24 to the satisfaction of the Town. Lots 11 and 24 will be held in escrow by the Town until further road connections are available through the lands to the south at which time the temporary road connection can be removed.
- 4.20 The Owner shall post the letters of credit and cash deposits with the Town for the subdivision in accordance with Schedule "F" attached.
- 4.21 The Owner agrees to the following conditions subject to the approval of the Town:
- (a) To construct at its own expense a 1.5 metre sidewalk along one side of Streets A, B and C (Apricot Glen Drive, Bunny Glen Drive and Red Haven Drive).
  - (b) All road designs shall be to urban standards.
  - (c) The road entrance design shall be subject to the approval of the Director of Public Works.
  - (d) That a street lighting design be submitted to the Director of Public Works for approval.
  - (e) That all infrastructure works shall be constructed to current Town standards.
  - (f) That all construction plans and supporting reports will be subject to peer review at the Owner's expense.
  - (g) That all the proposed infrastructure will be subject to Town inspection at the Owner's expense.

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- (h) That the stormwater management block (Block 44) shall be transferred to the Town of Niagara-on-the-Lake free and clear of any mortgages, liens and encumbrances.
  - (i) That the streets identified as Streets A, B and C (Apricot Glen Drive, Bunny Glen Drive and Red Haven Drive) are transferred to the Town of Niagara-on-the-Lake free and clear of any encumbrances.
  - (j) The owner shall be required to provide the following information to establish the appropriate security deposits:
    - (i) the cost of all on-site and off-site works
    - (ii) the number of working days required to complete the proposed works.
- 4.22 The Owner agrees to provide detailed calculations to the Director of Public Works to confirm that there is adequate sanitary sewer capacity to service this development and any future development to the south.
- 4.23 The Owner shall submit a landscape plan for the stormwater management block located on Block 44 to the Director of Public Works and Director of Parks and Recreation for review and approval.
- 4.24 The Owner agrees to submit a lot grading plan for the subject lands and the any future development on the lands to the south to the Director of Public Works for review and approval.
- 4.25 The Owner agrees to submit the stormwater management report and the grading and servicing plans to the Ministry of Transportation addressing the intended treatment of the calculated runoff and its impact on the Ministry highway for both the present and any future phases of development.
- 4.26 The Owner agrees to secure all required easements for the stormwater pond outlet from the adjacent lands and the lands located on the east side of Four Mile Creek road to provide for a stormwater outlet to Four Mile Creek to the benefit of the Town and subject to the approval of the Director of Public Works.
- 4.27 The detailed sedimentation and erosion control plans shall be submitted to the Niagara Peninsula Conservation Authority for review and approval. All sediment and erosion control measures shall be maintained in good condition for the duration of construction until all disturbed surfaces have been stabilized. Muddy water shall not be allowed to leave the site.

- 4.28 The Owner shall obtain the required permits from the Niagara Peninsula Conservation Authority for the proposed outfall to Four Mile Creek in accordance to the Niagara Peninsula Conservation Authority's Fill, Construction and Alteration to Waterways Regulation.
- 4.29 Prior to any development or land disturbance the Owner shall obtain a Niagara Escarpment Development Permit from the Niagara Escarpment Commission identifying Block 44 (the stormwater block) as a non-residential use.
- 4.30 The Owner shall post letters of credit or cash deposits with the Town for the subdivision or the first phase to provide:
- (a) 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:
    - (i) Primary Services - Letter of Credit equal to 10% of the estimated cost,
    - (ii) Secondary Services - Letter of Credit equal to 100% of the estimated cost,
    - (iii) Tertiary Services - Letter of Credit equal to 100% of the estimated cost.

**5. CONSTRUCTION OF SERVICES**

- 5.1 The Owner 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 Schedules. All materials supplied shall be to the specifications and satisfaction of the Director of Public Works.
- 5.2 The Owner shall insure that all public roads in the vicinity of the development are kept clean of mud and debris from the proposed development and shall pay to the Town a deposit as indicated in Schedule 'F' attached.
- 5.3 The Owner 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. The Owner shall adequately maintain all roads, sidewalks and pedestrian walks within the subdivision free from mud, debris, building materials or other obstructions to the satisfaction of the Town.

- 5.4 The Owner 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 'General Grading Plan'.
- 5.5 The Owner 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 Owner 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 Owner 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 Owner shall make satisfactory arrangements with the telephone company, and where applicable, the gas company and cable television 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 lands within any urban boundary, as shown on the Town Official Plan, shall be underground.
- 5.10 The owner shall ensure that water mains 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 Public Works.
- 5.11 Upon completion of the Primary Services to the satisfaction of the Director of Public Works, he shall issue a certificate of completion of the Primary Services.
- 5.12 The Town agrees not to lift the 0.3m reserve along Street A (Apricot Glen Drive) being Blocks 40 and 41, until the adjacent property owner(s) have agreed to buy-in charges relating to roadway access, water and storm services.

## **6. INSPECTION**

- 6.1 The Owners engineer shall:
  - (a) supervise and inspect the construction of the works on an as-required basis, including the setting and checking of all lines and grades, quantity control, prior to, during and after construction,

- (b) arrange for the inspection of works at all stages of construction so that 'as built' drawings can be prepared, and,
- (c) arrange a pre-construction meeting and site meetings as required but at least once per month to which the Town shall be invited and for which the Town shall receive forthwith a copy of the minutes.

6.2 The Town's designated inspector will inspect the construction quality of all primary, secondary and tertiary services and provide as built measurements to the Owner's engineer.

## **7. CONDITIONS PRECEDENTS TO THE ISSUANCE OF A BUILDING PERMIT**

- 7.1 Building permits shall not be issued until the following conditions are met:
- (a) completion of Primary Services for the relevant phase of development,
  - (b) the Owner shall submit individual lot grading plans that conform to the approved 'General Grading Plan' and approved by the consultant design Engineer for compliance with the approved 'General Grading Plan',
  - (c) payment of all development charges, including all applicable Municipal and Regional development charges, due and payable at the prevailing rate.
  - (d) compliance with the Building Code Act,
  - (e) activation of hydrants for the relevant phase of development,
  - (f) deposit with the Town, prior to the issuance of building permit in the form of cash or letter of credit, \$1000 per lot or block to ensure completion of any required curb cuts and verification of individual lot or block compliance with the General Grading Plan,
  - (g) install all street and regulatory signs in the Plan to the satisfaction of the Director of Public Works,
  - (h) the building design, scale, massing, orientation and streetscape has been reviewed in accordance with the Village of St. Davids Urban Design Guidelines by the Director of Planning and Development Services and be consistent with these design guidelines.

- 7.2 Notwithstanding 7.1 (a) above, a conditional Building Permit may be issued for the construction of model homes provided that the model homes can neither be sold nor occupied as a residence until sanitary sewers can be provided and all conditions of the permit and this section have been met. It is acknowledged by the Owner that the conditional building permit is issued on the terms set out in Section 8.3c, (i) to (v) inclusive, of the Building Code Act. The deposit required by 8.3c (v) shall be \$5000 per lot or block.
- 7.3 Upon the completion of the project, the design engineer shall certify all grading, storm sewers and stormwater management controls, including off-site outlets, have been constructed in general conformity with the approved drawing. Copies of the certification shall be circulated to the Niagara Peninsula Conservation Authority.

**8. CONDITIONS PRECEDENT TO THE ASSUMPTION OF PRIMARY SERVICES AND RELEASE OF SECURITY**

- 8.1 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.
- 8.2 The Owner at its own expense, pending assumption by the Town, repairing and maintaining to the satisfaction of the Director of Public Works, any works to the standards required by the plans and specifications.
- 8.3 Written application for the assumption is received by the Director of Public Works. The Town shall have thirty (30) days from the receipt of the request to carry out such inspections as it may consider necessary, and
- 8.4 The payment of all financial requirements herein that are then due.

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 Owner.

**9. CONDITIONS PRECEDENT TO THE ASSUMPTION OF SECONDARY SERVICES AND THE RELEASE OF SECURITIES**

9.1 INSTALLATION

Secondary Services shall be installed at the earlier of 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 the 30th of April, such services shall be completed by the 30th of June next following. Upon completion to the satisfaction of the Director of Public Works, he shall issue a certificate of completion of Secondary Services.

9.2 REDUCTION OF LETTERS OF CREDIT

Forty-five (45) days after completion of the Secondary Services to the satisfaction of the Director of Public Works, the Owner 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 Owner and shall retain only the 10% cash deposit.

9.3 ASSUMPTION AND RETURN OF DEPOSIT

The Secondary Services shall be assumed upon:

- (a) the expiration of one (1) year from the certificate of the Director of Public Works that all Secondary Services have been completed,
- (b) 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,
- (c) written application for the assumption is received by the Director of Public Works. The Town shall have thirty (30) days to carry out such inspections, and
- (d) the payment of all financial requirements herein.

Upon satisfaction of the foregoing conditions the deposit for Secondary Services or the amount remaining thereof shall be returned to the Owner.



**10. PRECONDITIONS PRECEDENT TO THE ASSUMPTION OF TERTIARY SERVICES AND THE RELEASE OF SECURITY**

**10.1 INSTALLATION**

Tertiary Services shall be installed for each lot within sixty (60) 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 Public Works, he shall issue a Certificate of Completion of such percentage of the Tertiary Services.

**10.2 REDUCTION OF LETTERS OF CREDIT**

Forty-five (45) days after issuance of the certificate the completion of 25%, 50%, 75% and 100% of the Tertiary Services, the Owner 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 the work that has been completed and shall retain only the 10% cash deposit for such percentage as is completed but shall retain letters of credit and deposits for the remaining Tertiary work.

**10.3 ASSUMPTION AND RETURN OF DEPOSIT**

The Tertiary Services shall be assumed upon:

- (a) the expiration of one (1) year from the certificate of the Director of Public Works that 100% of the Tertiary Services have been completed,
- (b) 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,
- (c) written application for the assumption is received by the Director of Public Works. The Town shall have thirty (30) days to carry out such inspections,
- (d) the payment of financial requirements herein,
- (e) the re-staking of all key points in the Subdivision in accordance with the Surveys Act and Regulations thereunder,
- (f) the Owner's engineer certifying to the Director of Public Works that the grading has been completed in accordance with the approved 'General Grading Plan',

- (g) the Owner's engineer supplying the Director of Public Works with a set of 'As Constructed Drawings' of all the works in a reproducible form satisfactory to the Director of Public Works, and
- (h) when all matters, works, services and things required to be constructed, installed, or done by the Owner shall, in the opinion of the Director of Public Works, have been accomplished strictly in accordance with this Agreement and to the specifications and satisfaction of the Director of Public Works, the Director of Public Works shall issue to the parties hereto the Final Certificate of Approval.

Upon satisfaction of the foregoing conditions the deposit or Letter of Credit for Tertiary Services or the amount thereof remaining shall be returned to the Owner and upon completion of the Tertiary Services for all phases the Town shall dedicate as a public road any one (1) foot reserve lying between the Subdivision and any assumed public roadway.

#### **11. RESTRICTIVE COVENANTS**

- 11.1 Pursuant to the Planning Act this Agreement shall be binding upon the Owners, their heirs, executors, administrators, assigns and successors in title and owners 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 Lot Grading Plan' shall be maintained in perpetuity or at the discretion of Council.
- 11.2 It is agreed and understood that the Owner 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 Public Works and or the Director of Planning 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.

- 11.3 The Owner agrees that there shall be no open burning of waste construction materials unless specifically approved by the Town Fire Department.
- 11.4 The Owner agrees to include a requirement in all offers to purchase and sale that: the purchaser agrees to maintain the grassed boulevard directly in front of his lot.
- 11.5 The Owner agrees that noise warning clauses shall be registered on title with each lot due to the proximity of Highway 405, and that all offers of purchase and sale indicate that the dwellings will be constructed with forced air duct heating systems sized to accommodate air conditioning.
- 11.6 The Owner include in all offers of purchase and sale a requirement that house design, scale, massing, orientation and streetscape be reviewed by the Town Planning and Development Services Department in accordance with the Village of St. Davids Urban Design Guidelines and be consistent with these design guidelines.
- 11.7 The Owner 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).
- 11.8 The Owner shall provide the Regional Planning and Development Department with a written undertaking that all offers and agreements of purchase and sale that may be negotiated prior to registration of the subdivision shall contain a clause clearly indicating that a servicing allocation for the subdivision will not be assigned until the plan is granted final approval for registration.

**12. DEFAULT**

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

**13. SCHEDULES**

- 13.1 The provisions of all Schedules attached hereto shall form part of this Agreement.

**14. ARBITRATION**

15.1 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:

- (a) The party seeking arbitration shall give the other party written notice of the issue to be arbitrated, and the relief or remedy desired.
- (b) 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.
- (c) 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, the arbitration shall be conducted by a single Arbitrator.
- (d) 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 (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.
- (e) The award or decision of the Arbitrators shall be binding upon the parties hereto.

**15. MORTGAGEES**

15.1 The mortgagees 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 Owner 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 Owner.

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

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

**OWNER: ORCHARD GLEN GARDEN FRESH TRADITIONS INC., 126 FOUR CREEK ROAD, ST. DAVIDS, ON, L0S 1P0**

**MORTGAGEE: The Effort Trust Company, 240 Main Street East, Hamilton, Ontario, L8N 1H5**

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

SIGNED, SEALED AND DELIVERED  
in the presence:

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

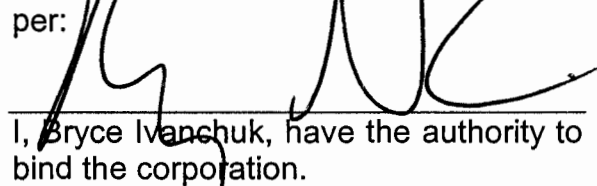
per:

  
LORD MAYOR GARY BURROUGHS

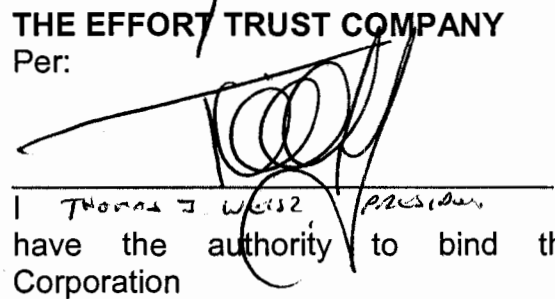
  
TOWN CLERK HOLLY DOWD

**ORCHARD GLEN GARDEN FRESH  
TRADITIONS INC.**

per:

  
I, Bryce Ivanchuk, have the authority to  
bind the corporation.

**THE EFFORT TRUST COMPANY**  
Per:

  
I, Thomas J. Weiss, President,  
have the authority to bind the  
Corporation

**SCHEDULE 'A' - LEGAL DESCRIPTION**

Part Township Lots 91 and 92, and Part of the Road Allowance between Lots 91 and 92 (Closed by RO698193), Niagara, designated as Part 1 on 30R-11170, Niagara-on-the-Lake.

Pin: 46373-0362 (LT)

## SCHEDULE 'B'

### FINAL PLANS, LAND DEDICATIONS, EASEMENTS, AND RELATED MATTERS

#### FINAL PLANS

1. The Final Plan means the plan of subdivision prepared by William A. Mascoe, O.L.S. of William A. Mascoe Surveying Ltd., dated January 6, 2004 and as revised on September 27, 2004, showing Lots 1 to 39 inclusive, Blocks 40 to 43 inclusive (the 0.3m reserves) and Blocks 44 (the stormwater management facility) and the public roads to be dedicated to the municipality on Plan 30M-354.

#### LAND DEDICATIONS & EASEMENTS

(NOTE: All lands deeded to the Municipality shall be free and clear of any mortgages, liens, and encumbrances, to the satisfaction of the Municipality.)

1. Blocks 40, 41, 42 and 43, as shown on the Final Plan, 30M-354 are to be dedicated to the Town of Niagara-on-the-Lake as 0.3 metre control access reserves.
2. Block 44, as shown on the Final Plan, 30M-354 is to be deeded to the Town for stormwater management purposes.
3. A six (6) metre wide easement through Lots 11, 24 and 31, 30M-354, shown as Parts 6, 10 and 14 respectively on 30R-11729 are to be deeded to the Town of Niagara-on-the-Lake as temporary secondary access for emergency purposes.
4. Easements through part of Lots 2, 3, 6, 7, 10, 18, 21, 22, 25, 28, 29, 32 and 33 Plan 30M-354, shown as Parts 1, 2, 3, 4, 5, 7, 8, 9, 11, 12, 13, 15 and 16 respectively and an easement through part 17 all on 30R-11729 are to be deeded to the Town of Niagara-on-the-Lake for stormwater drainage purposes.
5. Streets Apricot Glen Drive, Bunny Glen Drive and Red Haven Drive as shown on Plan, 30M-354 are to be dedicated to the Town of Niagara-on-the-Lake as public road allowances by registration of the Plan.
6. A six (6) metre wide easement of Part 1 on 30R-11546 is to be deeded to the Town of Niagara-on-the-Lake for sanitary and stormwater purposes.
7. A six (6) metre easement over Part 2, as shown on the Plan 30R-11546 is to be deeded to the Town of Niagara-on-the-Lake as an easement for emergency access.

NOTE: THE OWNER 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

## SCHEDULE 'C'

### PRIMARY SERVICES

#### ROADS

All roads dedicated as public highways shall be constructed to urban design standards with the pavement width being 8.5 metres from curb face to curb face; a granular depth of 375 mm and 50 mm HL8 asphalt; and concrete curb and gutter of standard type O.P.S.D. 600.04; to the satisfaction of the Town and all in accordance with the engineering plans approved by the Department of Public Works.

The Owners shall maintain and repair temporary roadways until trench settlement has ceased and adequate compaction of the road subgrade 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.

All manhole tops shall be originally set level with the base course of asphalt.

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.

The Owners shall pay a cash deposit to erect street name signs and regulatory signs (e.g. stop signs; no exit signs, etc) to be installed by the Public Works Department.

#### ELECTRICAL

The electrical system, which consists of primary distribution, transformers, and secondary services shall be approved by Niagara-on-the-Lake Hydro. The Owners shall enter into a separate agreement with Hydro whereby the Owners agree to pay all necessary capital contributions towards the supply to the electrical system.

The street lighting system shall consist of the underground street light service wire, concrete or steel streetlight pole and lighting fixture. The street lighting system shall be designed by the Owner's contractor, all at the Owner's expense. Final design, street lighting materials and construction of the street lighting system shall be approved by the Public Works Department.

The street lights selected shall be high pressure sodium 100 watt with the design and quality to be approved by the Director of Public Works.

#### SANITARY SEWER

All sewers shall be installed in accordance with engineering plans approved by the Director of Public Works. 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.

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 Public Works.

#### PRIVATE DRAIN CONNECTIONS

The Owners shall construct separate sanitary connections (laterals) to each lot from the street sewer to the street line. The sanitary sewer lateral shall be a minimum 125 mm diameter PVC pipe with proper waterproof plug fittings approved by the Director of Public Works.



The ends of sanitary sewer laterals shall be marked with a wooden stake.

#### STORM SEWER AND STORMWATER MANAGEMENT SYSTEM

The stormwater management system shall be installed in accordance with Engineering Plans approved by the Ministry of Transportation, the Regional Planning and Development Department, the Niagara Peninsula Conservation Authority and the Director of Public Works. The stormwater management system shall meet the design criteria of the Regional Municipality of Niagara, the Director of Public Works and the Ministry of Environment for storm water.

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's rainfall chart and runoff coefficients, shall be used to determine discharge capacity for 5 year return storm.

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 Public Works. Surface drainage shall be collected by means of catch basins as per the following detail. Maximum length of gutter flow 100 meters.

Storm laterals will not be provided for individual lots within the development. The sump pumps will discharge to the rear of the properties and at grade.

#### WATERMAINS

All watermains shall be installed in accordance with the Engineering Plans approved by the Director of Public Works. 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 Owner and shall be approved by the Director of Public Works.

The Owners shall construct a complete watermain system or systems and all necessary appurtenances, including hydrants, cathodic protection and 19mm house water service connections from the watermain to the lot line. The design shall be as approved by the Director of Public Works and constructed in accordance with his specifications. All watermains shall be a 150 mm diameter or a sufficient size to service the subdivision and structures therein as described in Schedule 'A'.

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.

All hydrants shall be free of obstructions after being activated.

Hydrants 'style' shall comply with the requirements of the Department of Public Works.

#### SIDEWALKS (Primary)

The Owner shall construct 1.5 metre wide sidewalks at it's own expense along one side of Street A, B and C (Apricot Glen Drive, Bunny Glen Drive and Red Haven Drive) to the satisfaction of the Town's Public Works Department.

## SCHEDULE 'D'

### SECONDARY SERVICES

40 mm HL3 top coat of asphalt.

All manhole covers shall be raised to finished elevation prior to top coat of asphalt.

## SCHEDULE 'E'

### TERTIARY SERVICES

#### Boulevards:

A minimum of 50 mm of topsoil shall be applied from the curb to the property lines and sodded.

The driveway area between the curb and property line, or the sidewalk as the case may be, shall be, at a minimum, asphalt paved or such other materials to the satisfaction of the Director of Public Works.

Trees shall be planted at a rate of one per lot on interior lots and two per lot on corner lots.

Trees shall be placed in locations acceptable to the Director of Parks and Recreation and the Director of Public Works.

Trees shall have a minimum caliper of 50 mm measured at a point 500 mm above the ground.

The type of tree to be planted shall be mutually agreed upon and approved by the Director of Parks and Recreation in accordance with the approved Landscape Plan and consistent with the streetscape elements of the Village of St. Davids Urban Design Guidelines.

#### General

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. It is noted that sanitary sewers may not be deep enough to service basement connections.

Roof water or discharge from a sump pump for any building constructed on any lot must be discharged to the surface at the rear of such lot. No connections shall be made to any existing field tile drainage systems.

Sump pump outlets for lots fronting on existing public roads will be diverted to the rear lot drainage works.

The Owner will sod swales to ensure compliance with the lot grading plans.

The Owners shall be responsible for any damage caused to such watermain and appurtenances that may occur during construction of buildings and during the lot grading.

**SCHEDULE 'F' - SECURITY DEPOSITS AND  
REQUIRED PAYMENTS**

**THIS SCHEDULE IS TO BE COMPLETED PRIOR TO REGISTRATION OF  
THE SUBDIVIDER'S AGREEMENT.**

**APRICOT GLEN ESTATES SUBDIVISION**

				FORM	
Item	Reference	Subject	Est. Cost	L of C	Cash
Prior to Signature:					
1.	3.1(a)	Tax Arrears (May, 2005)	\$2,754.18		\$2,754.18
2.	3.1(b)	Local Improvement Charges	NA		NA
3.	3.1(c)	Agreement/Plan Registration	\$540.00		\$540.00
Totals:			\$3,294.18		\$3,294.18
Preconditions of the Construction of Services:					
4.	4.27	Primary Services - 10%	\$100,000.00	\$100,000.00	
5.	4.27	Secondary Services - 100%	\$91,000.00	\$91,000.00	
6.	4.27	Tertiary Services - 100%	\$88,000.00	\$88,000.00	
7.	6.2	Inspection	\$35,000.00		\$35,000.00
8.	4.7	Engineering Plan Review	\$5,000.00		\$5,000.00
9.		Signs	\$1,500.00		\$1,500.00
10.	3.5	Parks Dedication	\$48,750.00		\$48,750.00
11.	5.2	Maintenance of Public Roads during construction	\$1,000.00		\$1,000.00
Total Letters of Credit & Cash:			\$373,544.18	\$279,000	\$94,544.18
Prior to Issuance of Building Permit					
	7.1(f)	Lot Grading Deposit			\$1000 per lot

**NOTE:**

- Water Metering and Curb Cuts should be incorporated in the cost estimate for Primary Services.
- Separate Agreement with Niagara-on-the-Lake Hydro and other utilities (ie. Canada Post) required.