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TSAWWASSEN FIRST NATION
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Land Use Planning and Development Act

SUBDIVISION AND DEVELOPMENT REGULATION

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Whereas the Tsawwassen First Nation may make laws in respect of creating a Tsawwassen fee simple interest and for establishing conditions and restrictions on such interests, and in respect of the provision of services; and

The Tsawwassen First Nation Land Act and Land Use Planning and Development Act authorizes the Executive Council to enact regulations that require the provision of Works and Services in respect of the Subdivision and development of land;

Now therefore the Executive Council of the Tsawwassen First Nation enacts as follows:

Title

- 1 This regulation may be cited as the “Tsawwassen First Nations Subdivision and Development Regulation, 2009”.

Interpretation

- 2.1 Unless otherwise defined herein, any word or expression in this regulation shall have the meanings assigned to it in the *Tsawwassen First Nation Final Agreement* or the *Land Act* or *Land Use, Planning and Development Act*, as the context and circumstances require.
- 2.2 The equivalent Imperial units of measure shown in parenthesis after metric units are for information purposes only and do not form part of this regulation.
- 2.3 If any part, section, subsection or phrase of this regulation is held to be invalid by a court of competent jurisdiction, the invalid portion shall be severed and the remainder of the regulation will be deemed to have been enacted without the invalid portion.

Definitions

- 3.1 In this regulation:

“**ACCEPTANCE CERTIFICATE**” shall mean the certificate issued by the Approving Officer for final acceptance of the Works and Services when the maintenance period has been completed to the satisfaction of the Approving Officer, the Director of Land or other designated individual;

“**APPLICANT**” means a person who has applied for approval of a Subdivision or Development of land, whether as the Parcel Holder or as the agent for a Parcel Holder of the land in respect of which the application was made;

“**APPROVING OFFICER**” means the Director of Land, the Consulting Engineer, or other person appointed by the Executive Council to administer this regulation and to approve applications for subdivision pursuant to the *Land Use, Planning and Development Act*;

“**ARTERIAL ROAD**” means a highway whose primary function is to carry through traffic from one area to another with as little interference as possible from adjacent land uses, but which may provide direct access to property as a secondary function;

“**CERTIFICATE OF SUBSTANTIAL COMPLETION**” shall mean the certificate issued by the Approving Officer for acceptance of the Works and Services for the start of the maintenance period and will be issued when the Works and Services are completed to the satisfaction of the Approving Officer, the Director of Land or other designated individual;

“**COLLECTOR ROAD**” means any Road directly connecting to an arterial Highway at one end and connecting to a Rural or Residential Road on the other end;

“**CONTRACTOR**” means any person or corporation undertaking the installation of Tsawwassen First Nation services on behalf of an Applicant;

“CUL-DE-SAC” means a Road that terminates in a vehicular turning area, an area that is closed to vehicular traffic, or a natural feature such as inaccessible terrain;

“DEVELOPMENT” includes a subdivision and any construction, alteration, excavation or improvement of land, building or other structure that requires a building permit or the installation of a work or service under this regulation;

“FINAL APPROVAL” means the approval of a subdivision by the Approving Officer when all conditions of preliminary approval have been met and the Approving Officer is satisfied that all of the applicable requirements of this regulation, the *Land Act*, and the *Land Use, Planning and Development Act*, and that the application complies with any other relevant laws or legislation;

“FRONTAGE” means the length of the front lot line of a Parcel;

“FRONTAGE ROAD” means a Road which is parallel and adjacent to a Major Road and which provides access to abutting parcels;

“HIGHWAY” means a road, street, lane, walkway, trail, path, thoroughfare, bridge, viaduct and any other way open to public use, other than a private right of way on private property;

“LOCAL ROAD” and “RESIDENTIAL ROAD” means a Highway used or intended to be used primarily for access to abutting parcels rather than for through or commercial traffic;

“LOT WIDTH” has the meaning prescribed by the Zoning Bylaw;

“MAJOR ROAD” means a Road designated as a Major Road in the Land Use Plan;

“MEDICAL HEALTH OFFICER” means the duly appointed senior health official of the Fraser Health Authority;

“PARCEL” means any lot, block, or other area in which real property is held or into which real property is subdivided but does not include a Road or portion thereof;

“PARCEL HOLDER” means, in respect of real property, the registered owner of a parcel or a person holding a lease or certificate of possession;

“PRELIMINARY APPROVAL” means the written, conditional approval of a subdivision plan by the Approving Officer;

“PRELIMINARY LAYOUT APPROVAL (PLA)” means a document issued by the Approving Officer which sets out the terms and conditions for final subdivision plans approval;

“PROFESSIONAL ENGINEER OR CONSULTING ENGINEER” means a person who is registered under the provisions of the Engineers and Geoscientists Act of the Province of British Columbia;

“PUBLIC UTILITY” means any system having facilities installed in a Right-Of-Way for the purpose of providing a service to property including systems for water, gas, electricity, steam, or any other agent for the production or distribution of light, energy, sewage and drainage collection and disposal, emission, transmission or reception of information, messages or communications by cable, microwave, telephone, optical fibre or radio communications systems;

“RIGHT-OF-WAY” means land or any interest in land acquired for the purpose of:

- (a) public rights of passage with or without vehicles;
- (b) erecting and maintaining any pole-line;
- (c) laying, placing, and maintaining drains, ditches, rainwater detention, pipes, transmission lines, or wires for the conveyance, transmission, or transportation of water, electric power, forest products, oil, or gas, or both oil and gas, or solids as defined in the *Pipelines Act* of British Columbia;.
- (d) the disposal or detention of sanitary sewage, storm water or drainage; or
- (e) the operation and maintenance of any other undertaking of Tsawwassen First Nation.

And shall include a Statutory Right-Of-Way as defined in the *Lands Act*.

“ROADWAY” means the portion of a Road that is improved, designed and used for vehicular traffic, but does not include the shoulder;

“ROAD” means a Highway that affords the principal means of vehicular access to abutting Parcels, and includes a Road or Road allowance;

“SECURITY” means an irrevocable letter of credit, cash deposit, certified cheque, or other form of security satisfactory to the Executive Council or the Approving Officer;

“SERVICE LEVEL” means that the standard of service required by this regulation for the development of land;

“SIDEWALK” means a walkway constructed of concrete or asphalt that is intended for pedestrian traffic only;

“SUBDIVISION” means the division of land into two or more Parcels or the consolidation of two or more parcels, whether by Survey Plan or by metes and bounds description or otherwise;

“SURVEYOR” means a land Surveyor licensed and registered as a land Surveyor in the Province of British Columbia;

“SURVEY PLAN” means a fully dimensioned legal plan prepared by a Surveyor;

“TRAIL or PATH” multi use, means a Highway for the use of the walking public and bicycle traffic, that may be designed to afford emergency or maintenance vehicle use;

“WATER COURSE” means any drainage course or source of water, whether usually containing water or not, and includes any lake, river, stream, creek, spring, ravine, swamp, gulch, or source of ground water whether open or enclosed;

“WORKS AND SERVICES” means any or all works, services, facilities and utilities that are required by this regulation to be designed, constructed and installed as a condition of subdivision or other development approval and without limitation, includes highways, sidewalks, trails, paths, landscaping, curbs, gutters, ductworks, boulevards, boulevard crossings, transit bays, street lighting, water distribution systems, fire hydrant systems, sewage or drainage collection and disposal systems, hydro, electrical, gas, cable vision, and telephone supply, and other things required to be done under this regulation or otherwise in relation to the subdivision or other development whether on a parcel being subdivided or elsewhere;

“WORKS INSPECTOR” means an employee of the Tsawwassen First Nation or a Consulting Engineer either or both of whom have been appointed by the Chief Administrative Officer to coordinate, inspect and test any or all works and services provided, constructed or installed pursuant to this regulation; and

“ZONING REGULATION” means the current regulation of the Tsawwassen First Nation adopted under the *Land Use Planning and Development Act*.

Subdivision and development of land

- 4.1 A person shall not subdivide or otherwise develop land within the Tsawwassen Lands except in compliance with this regulation.
- 4.2 As a condition of subdivision approval or the issuance of a building permit for development, every Applicant shall:
- (a) comply with all applicable requirements of this regulation and all other legislation, regulations, bylaws, rules and policies that apply to the Tsawwassen Lands; and
 - (b) obtain any and all necessary approvals and permissions from the Tsawwassen First Nation Government and the ministries, agencies and authorities of any other government body having jurisdiction;

and compliance with this regulation shall not relieve the applicant from compliance with all other applicable enactments.

Application for subdivision

- 5.1 Every application for subdivision shall be made in writing to the Approving Officer on the form prescribed from time to time by the Executive Council for that purpose, and shall include but may not be limited to the following information and documentation:
- (a) a dimensioned sketch or survey plan of the parcel to be subdivided, showing clearly and accurately the proposed method of subdivision and the location and dimensions of all structures located on the parcel;
 - (b) a statement or other indication as to the intended use of the subdivided lands; and
 - (c) a topographical survey including any spot and break point elevations, existing structures on the subject property and on adjoining properties at common property lines.
- 5.2 If the Approving Officer considers that the land is, or could reasonably be expected to be, subject to flooding, erosion, land slip, or subsidence, the applicant shall:
- (a) provide, at the expense of the Applicant, a report certified by a professional engineer that the land may be used safely for the use intended; and
 - (b) provide a covenant in favour of the Tsawwassen First Nation, entered into by the Parcel Holder as covenantor, in respect of any of the Parcels to be created by the subdivision, which covenant may be of a kind described in Section 219 of the *Land Title Act* of British Columbia, and that contains a promise by the covenantor that the land will not be subdivided, built on, or used except in accordance with the covenant.
- 5.3 All drawings, sketches, and plans submitted in respect of an application for subdivision shall comply with the standards established in the Schedules to this regulation. The Approving Officer may adopt or revise, from time to time, criteria, standards and specifications for municipal services and highways where the adoption, revision and implementation of those criteria, standards and specifications support the policies endorsed by the Executive Council and are acceptable to the operating authorities of the proposed services affected by the criteria, standards and specifications.
- 5.4 The Approving Officer may consider the use and implementation of alternate standards for municipal services and highways where those alternates are demonstrated by the Parcel Holder to support policy endorsed by Executive Council, and where the implementation of the alternate standard is acceptable to the operating authorities of the proposed services affected by the alternate standards.
- 5.5 The acceptance of an application for review by the Approving Officer shall not be construed as either preliminary approval or final approval of the proposed subdivision.

Preliminary and final approval

- 6.1 Preliminary approval is effective for a period of one hundred eighty (180) days, following which time the applicant must resubmit the application for preliminary approval with payment of any applicable fees, except that the Approving Officer may grant an extension where he or she is satisfied that there has been unavoidable delay or other special circumstances exist that would justify an extension of time.
- 6.2 Preliminary approval of a proposed subdivision shall not be construed as final approval; and the Approving Officer acting reasonably may revoke preliminary approval at any time.
- 6.3 No application for a subdivision shall be approved by the Approving Officer unless such proposed subdivision:
- (a) is suited to the configuration of the land being subdivided;
 - (b) is suited to the use to which it is intended;
 - (c) does not make impractical the future subdivision of land within the proposed subdivision or of any adjacent lands;

- (d) meets all requirements of the Zoning Regulation and the Land Use Plan; and
- (e) is not contrary to the public interest.

6.4 Final approval of a subdivision is effective upon the signing of the subdivision plan by the Approving Officer.

Design & installation of works & services

- 7.1 Except as otherwise provided in this Regulation, the Parcel Holder shall provide paved vehicular and pedestrian highway systems; a municipal water distribution system; a municipal sanitary sewer system; drainage works including surface and underground collection, conveyance and treatment systems; underground wiring; and street lighting systems such that each system:
- (a) serves and is connected to all parcels created by the subdivision or the development;
 - (b) extends along all highways within the subdivision;
 - (c) extends along all highways adjacent to the development, up to the centerline of the highway allowance;
 - (d) connects to the appropriate public utility; and
 - (e) shall be constructed to allow for connection to lands and systems beyond the proposed development.
- 7.2 The Parcel Holder whose Parcel is the subject of a subdivision or other development application shall provide, locate and construct at the Parcel Holder's own expense, such works and services within the Subdivision, and to the center line of the Highway or Highways immediately adjacent to the land being subdivided, as are required by Schedules A and B of this regulation.
- 7.3 The Parcel Holder shall retain, at the Parcel Holder's own expense, a professional engineer to design the works and services in accordance with Schedules A and B of this regulation.
- 7.4 The servicing provisions of this Regulation may be waived by the Approving Officer where the land is being subdivided for the purpose of creating parcels of land required for the installation of public facilities, utilities, structures or associated equipment.
- 7.5 Every Parcel Holder of lands to be developed shall, at the Parcel Holder's sole cost and expense:
- (a) provide works and services for that development in accordance with the applicable provisions of this regulation; and
 - (b) ensure that the works and services are constructed and installed to the applicable minimum standards and specifications prescribed in this regulation.
- 7.6 All works and services required to be provided, designed, constructed and installed shall be provided, designed, constructed and installed at the expense of the Parcel Holder to the standards prescribed under this regulation and to the satisfaction of the Approving Officer after consultation with a professional or consulting engineer employed or retained by the Tsawwassen First Nation Government; prior to final approval of the Subdivision by the Approving Officer or the issuance of the building permit, as the case may be.
- 7.7 The Tsawwassen First Nation recognizes that site conditions may necessitate minor variations to servicing requirements and the requirements, standards and specifications for works and services established in this regulation, and the Approving Officer, having consulted with a professional or consulting engineer employed or retained by the Tsawwassen First Nation, may approve such minor variations.

Security & agreement

- 8.1 Despite subsection 7.6, at the request of the Parcel Holder, final approval of a subdivision may be granted or a building permit issued in respect of a development prior to completion of the required works and services if the Parcel Holder :
- (a) deposits in the Tsawwassen First Nation security, in a form compliant with this regulation, in the amount of 125% of the estimated costs of the works and services; and
 - (b) enters into a Works and Services Agreement with the Tsawwassen First Nation substantially in the form of Schedule C.
- 8.2 In any case where the works and services, or any part of the works and services, have been installed prior to final approval of subdivision or issuance of a building permit, the Parcel Holder shall:
- (a) enter into a written agreement with the Tsawwassen First Nation substantially in the form attached to Schedule C as Schedule C-A, to rectify any deficiencies in design, materials, workmanship, construction or installation that may arise in connection with the works and services during the twelve months next following the date that the Tsawwassen First Nation takes ownership of or responsibility for the works and services, or, in the case of rain water management systems, for the three years following that date; and
 - (b) as a guarantee of performance under the agreement, deposit with the Tsawwassen First Nation security in the amount of 5% of the annual cost of the works and services, or \$500, whichever is the greater, plus the estimated cost of maintaining any rain water management systems for three years, in a form compliant with Schedule C section 10.1, a, b, and c of this regulation.

Fees

- 9.1 An application for preliminary layout approval shall include a non-refundable fee in the amount of \$400.00 for the first lot to be created; and \$200.00 for each additional lot within the proposed subdivision.
- 9.2 For works and services that are required to be provided under this regulation, the Parcel Holder shall pay to the Tsawwassen First Nation the administrative and inspection costs incurred by the Tsawwassen First Nation, as calculated by the Approving Officer in consultation with its officers, employees or service providers as necessary, to do all things necessary to verify final acceptance of the works and services.

Rights of way

- 10.1 Where water, drainage, or sewage systems required for the subdivision or other development are not within a highway, the Parcel Holder of the land in respect of which the application was made shall grant to the Tsawwassen First Nation or obtain from third parties, at the Parcel holder's cost, a Right-Of-Way acceptable to the Approving Officer in accordance with the Tsawwassen First Nation's standard Right-Of-Way Agreement, and shall prepare and submit the Right of Way for registration in the appropriate land registry office.

Nuisance and damage

- 11.1 During construction or installation of works and services, the Parcel Holder, and the Applicant if someone other than the Parcel Holder, shall be jointly responsible for:
- (a) ensuring the safety of employees and contractors carrying out the work, and in particular, in accordance with applicable Provincial or Federal legislation addressing the safety of workers;
 - (b) maintaining control over dust, dirt, and harmful or annoying emissions;
 - (c) preventing escape of water or harmful substances, and other sources of nuisance; and
 - (d) ensuring the site is free of inappropriate accumulations of construction materials and any accumulations of toxic substances, waste material, garbage and debris, and that such substances, materials, garbage and debris are collected, stored, transported and disposed of in

accordance with standards established by the Greater Vancouver Regional District and in accordance with the *Environmental Management Act* of British Columbia.

- 11.2 If the Parcel Holder fails to effectively control the risks or occurrences of matters listed in this section, the Tsawwassen First Nation may notify and direct the Parcel Holder to do so, including by taking steps and measures, within a time period it considers to be reasonable in the circumstances. If the Parcel Holder fails to comply with such notice within the time period specified, the Tsawwassen First Nation may enter on the property, and carry out control and remedial measures at the cost of the Parcel Holder or Applicant or both of them.
- 11.3 If in the course of construction or installation of works and services, any land, water course, building, structure, or personal property on Tsawwassen Land is damaged or destroyed as a result of such works, the Parcel Holder shall restore such property, or ensure that such property is restored, to the current standards established in this regulation or other applicable law or enactment and to the satisfaction of an engineer employed or retained by the Tsawwassen First Nation and designated to act for that purpose.

Insurance

- 12.1 The Parcel Holder must obtain and maintain, at the Parcel Holder's expense, at all times until a certificate of final acceptance is issued in respect of the works and services, comprehensive general liability insurance coverage covering premises and operations, contingencies with respect of the operations of contractors and sub-contractors, completed operations liability, contractual liability and automobile liability for owned, non-owned, and hired units. Each insurance policy must:

- (a) provide for liability not less than \$5,000,000 for each occurrence for bodily injury, death and damage to property;
- (b) name the Tsawwassen First Nation Government as an additional insured;

provide that the policy cannot be cancelled, lapsed, or materially altered without providing at least thirty (30) days' notice in writing to the Tsawwassen First Nation Government by registered mail; and contain a cross-liability clause.

- 12.2 The Parcel Holder must deliver a copy of each insurance policy to the offices of the Tsawwassen First Nation, to the attention of the Approving Officer, prior to commencement of any of the works and services carried out in connection with an approval for development.
- 12.3 If the Parcel Holder fails to obtain and maintain insurance in accordance with this Section, the Tsawwassen First Nation may, but is not obliged to, obtain and maintain such insurance at the expense of the Parcel Holder.

Warranty and maintenance

- 13.1 The Parcel Holder shall be solely responsible for the costs of operation, maintenance, repairs and if necessary, replacement of works and services constructed and installed pursuant to this regulation for a period of twelve (12) months from the date that a certificate of substantial completion is issued, except that in the case of rain water management systems, which shall be for a period of three (3) years, and shall provide the Tsawwassen First Nation with security in an amount of at least ten percent (10 %) of the cost of all works and services associated with the development.
- 13.2 If the Parcel Holder fails to maintain, repair or replace the works and services during this period, the Tsawwassen First Nation may draw on the secured amount as necessary to cover the associated costs, and without limiting the foregoing, may, at the expense of the Parcel Holder, undertake such maintenance, repairs or replacement that may be necessary. Any expenses not recovered or recoverable from drawing on the secured amount, together with interest at the current rate established by the Municipal Finance Authority of British Columbia, may be recovered in like manner as for property taxes.

Completion and acceptance

- 14.1 Upon final completion of the works and services, the professional engineer retained by the Parcel Holder must schedule a field inspection with a Works Inspector. Prior to verification by the latter that total performance of the works and services have been achieved, the Parcel Holder must provide to the Approving Officer the following records:
- (a) a certificate of total performance prepared by the professional engineer retained by the Parcel Holder with respect to any and all works and services;
 - (b) a confirmation of professional assurance;
 - (c) confirmation in writing by a Surveyor that all survey pins have been installed on the Parcel;
 - (d) if required by the Approving Officer, one or more statutory declarations of the Parcel Holder that something required to be done has been done;
 - (e) as-built drawings of the works and services in accordance with this regulation; and
 - (f) all reports, manuals, videos, testing and results relating to the development.
- 14.2 Upon expiration of the warranty and maintenance periods, receipt of all required records, and verification by the Approving Officer in consultation with the Works Inspector and any other officials having relevant knowledge or responsibilities, that all documents, agreements, covenants, legal instruments, and other information, the Parcel Holder may be provided with a certificate of final acceptance for all works and services; and the balance of any security not drawn upon by the Tsawwassen First Nation as authorized by this regulation shall be released to the Parcel Holder.

Offence and penalty

- 15.1 Every person commits an offence who:
- (a) violates any of the provisions of this regulation;
 - (b) causes or permits any act or thing to be done in contravention or violation of any of the provisions of this regulation;
 - (c) neglects or omits to do anything required under this regulation;
 - (d) carries out, causes or permits to be carried out any development in a manner prohibited by or contrary to any of the provisions of this regulation;
 - (e) fails to comply with a notice or direction given under this regulation; or
 - (f) prevents or obstructs authorized entry by the Approving Officer, Works Inspector, other officials or employees of the Tsawwassen First Nation or officials of other regulatory bodies carrying out their duties under an enactment.
- 15.2 Every day that a violation continues under this Section constitutes a separate and distinct violation.
- 15.3 A person found guilty of an offence under this regulation shall be liable to a penalty not exceeding \$10,000.

Schedules

- 16.1 The following schedules are attached to and form part of this bylaw:
- (a) **SCHEDULE A: DESIGN CRITERIA**
Works provided pursuant to this Regulation shall be designed in accordance with the Master Municipal Construction Document (MMCD) Design Guideline Manual, most recent edition, and with the Supplementary Design Criteria of the Tsawwassen First Nation as issued and amended from time to time. Supplementary Design Criteria shall govern over the MMCD Design Criteria.

(b) **SCHEDULE B: SPECIFICATIONS AND STANDARD DRAWINGS**

Works provided pursuant to this Regulation shall be constructed in accordance with the Master Municipal Construction Document Specifications and Standard Drawings, edition dated 2000, and with the Supplementary Specifications and Standard Drawings of the Tsawwassen First Nation as issued and amended from time to time. Supplementary Specifications and Standard Drawings shall govern over the MMCD.

(c) **SCHEDULE C: WORKS AND SERVICES AGREEMENT**

**WORKS AND SERVICES AGREEMENT
SCHEDULE C**

THIS AGREEMENT made this _____ of _____, A.D. 2009

BETWEEN: THE TSAWWASSEN FIRST NATION (TFN), Treaty First Nation under the Tsawwassen Final Agreement and law, of BC, Canada and Tsawwassen First Nation, having an office at 131 N. Tsawwassen Drive, in Tsawwassen, in the Province of British Columbia.

(hereinafter called the “TFN”)

OF THE FIRST PART

AND:

(hereinafter called the “Developer.”)

OF THE FIRST PART

WHEREAS:

A. The Developer is the parcel holder, or representative of a parcel holder, of a Registered Right to Tsawwassen Lands situate, lying and being in Tsawwassen, Province of British Columbia, and more particularly known and described as:

(hereinafter called the “Land”);

B. The Developer wishes to subdivide the Land, or part thereof, in the manner shown on a Plan of Subdivision which has been submitted by the Developer to the Approving Officer of the TFN for approval, a copy of which such plan is attached hereto as Schedule “One”, and is hereinafter called the “Subdivision Plan”;

C. The Owner is desirous of entering into this Agreement with TFN pursuant to the provisions of the Tsawwassen First Nation Land Act and Land Use Planning & Development Act, in order to obtain approval from the Approving Officer of the Subdivision Plan prior to completion of the construction and installation on *and/or off* the Land of all works and services required by TFN to be constructed and installed on the Land and of any highway immediately adjacent to the Land by the Developer;

D. The Developer is also desirous of voluntarily providing works and services beyond the Land and the highway immediately adjacent to the Land in order to obtain approval from the TFN of the subdivision, as the TFN deems it to be too costly at this time to provide those works at the expense of its members.

NOW THIS AGREEMENT WITNESSETH that in consideration of the premises and of the mutual covenants and agreements herein contained, the parties hereto covenant and agrees as follows:

1. In this Agreement, unless the context otherwise requires:

“**Work**” shall be construed to mean and include all works, services, roads and any other improvement required to be constructed and erected or installed, both on and off the Land, by the Developer under provisions of this Agreement.

“**Complete**” or “**Completion**” or any variation of these words, when used with respect to the work referred to herein, shall mean completion of the work, or a part thereof as the context requires, in accordance with the provisions of this Agreement and to the satisfaction of the Director of Lands when so certified by him in writing.

“**TFN Engineer**” shall mean the Consulting Engineer appointed by TFN.

“**Approving Officer**” shall mean the Approving Officer or his deputy as appointed by the Executive Council of TFN.

“**Contractor**” shall mean and include contractors and sub-contractors employed by the Developer, directly or indirectly, in the construction and installation of the work.

2. The Developer covenants and agrees to construct and install on the Land and offsite as the case may be, in accordance with the plans and specifications initiated by each of the parties hereto for identification, the following work:
 - (a) On-site road and fire truck turnaround;
 - (b) Drainage works and services
 - (c) Sewage works and services;
 - (d) Water works and services;
 - (e) Off-site sidewalk;
 - (f) Boulevards;
 - (g) Curbs and gutters;
 - (h) Street lighting; and
 - (i) Underground electrical, telephone and cablevision works;

Each of the parties hereto acknowledge having in its or his possession a true copy of the aforesaid plans and specifications (herein after called the “Approved Engineering Plans”), and acknowledge and agree that the Approved Engineering Plans are hereby incorporated into and made part of this Agreement and are attached as Schedule “Two”.

3. All work shall be carried out by the Developer or his contractors in accordance with the Approved Engineering Plans, and in accordance with the provisions of the Subdivision and Development Regulation of the TFN from time to time in force. Wherever the provisions of the plans and specifications and the said Subdivision Regulation shall conflict, the TFN Engineer shall determine and consent in writing the provisions which shall be enforced and constructed.
4. The cost of all work herein shall be borne by the Developer and the Developer shall

Employ only bonded contractors to carry out and complete the work.

5. The Developer shall obtain and provide to TFN upon request and free of charge true copies of all contracts and sub-contracts entered into by the Developer or its contractors and relating to the work.
6. The decision of the TFN Engineer shall be final and binding on all parties hereto in determining whether or not the work or any part thereof has been carried out and completed in accordance with the provisions of this Agreement.
7. As soon as the Developer is satisfied that he has caused the work to be completed, and prior to final approval, the Developer shall submit to the TFN Engineer final as-built mylar drawings of all work constructed hereunder, sealed by a Professional Engineer. Where the as-built drawings have been completed using AUTOCAD or a similar computer drafting software, one copy of the diskette containing the as-built drawing files shall also be provided. Until the Developer submits the final as-built mylar drawings, the TFN will hold \$1,500 per sheet that is missing or deficient and \$1500 per diskette that is missing or deficient.
8. The Developer shall cause all work herein to be carried out and completed not later than the ____ day of _____, 20 ____ (hereinafter called the "Completion Date").
9. Prior to obtaining approval of the Subdivision by the Approving Officer, the Developer:
 - (a) shall pay all arrears of property taxes chargeable against the Land by TFN;
and
 - (b) shall pay all current assessed property taxes levied against the Land by TFN.
10. The Developer further covenants and agrees to pay to the TFN, prior to commencement of the subdivision, charges for the development, processing, engineering and inspection of the works equal to 3% on the first \$500,000; 2% on the second \$500,000.00 and 1% on the balance over \$1,000,000.00 of the estimated cost of constructing utilities and roads required for the new subdivision as approved by the TFN Engineer; and further, to pay when the same are billed by the TFN, administration fees, engineering fees and legal costs incurred by the TFN and relating to the Subdivision of the Land and construction and installation of the work, and the cost of connecting the work to TFN's drainage and sewage collection systems and, where applicable, the TFN waterworks.
11. Prior to approval of the Subdivision Plan by the Approving Officer, and as security for the due and proper performance by the Developer of all his covenants and agreements herein contained, the Developer shall deposit with the TFN, *cash* or an unconditional, irrevocable Letter of Credit drawn on a chartered bank in Canada for a term of not less than twelve (12) months, in the amount of _____(\$), which is equal to One Hundred and Twenty-Five percent (125%) of the cost of constructing and providing all of the work required to be constructed and installed by the Developer under the terms of this Agreement, as estimated by the TFN Engineer, and containing, and containing such terms and provisions as may be required by the TFN Engineer. The Developer agrees that if the work or any part thereof is not completed in accordance with the provisions of this Agreement and by the Completion Date, or if the Developer shall be in default of any of his covenants herein contained and such default shall continue for a period of fourteen (14) days after notice therefore has been given by the TFN to the Developer, the TFN may call for and receive the funds secured by the Letter of Credit and TFN may complete the work at the cost of the Developer and deduct completion, and the balance of the deposit with the TFN under the Line of Credit, then the Developer shall pay such

deficiency to the TFN immediately upon receipt of the TFN's bill for completing the work. It is understood and agreed that the TFN may do such work either by itself, or by contractors employed by TFN.

Any bill rendered by the TFN to the Developer under the provisions of this paragraph, shall be regarded as charges for work done or service provided under the provisions of the Land Use Planning & Development Act and may in addition to any other remedy available to TFN, be collected in the same manner and with the like remedies as ordinary taxes upon Land and improvements are collected under the said Act.

12. TFN will consent to reduction in the amount of security deposit herein from time to time, and in accordance with the following:
 - (a) The credit reduction will be equal to the cost of the work completed and approved by the TFN Engineer; and
 - (b) No reduction will be allowed for any amount less than 10% of the total cost of the construction and installation of the work;
 - (c) Upon completion of the Work any refund due will be debited in the amount of \$1500.00 per sheet per missing or deficient mylar sheet of final, as-built drawings and \$1500.00 for each missing or deficient computer diskette containing the as-builts where such diskette has been used by the applicant;
 - (d) Notwithstanding (a) and (b) herein, TFN will not refund any amount whichever is the lessor of 10% of the total cost of the constructing and installing of the work or \$50,000.00 for each \$1,000,000.00 or part thereof of the cost of construction and installation of the Work until the expiry of one (1) year following the full and final completion of all the work. Notwithstanding the above, the minimum deposit required to be held shall be not less than \$1000.00;
 - (e) The one-year warranty period provided for herein will be extended by the following periods of time if any of the following occurs:
 - i) from the time a deficiency is discovered until the time it is repaired; and
 - ii) if a deficiency is repaired and the sufficiency of that repair cannot be determined due to weather or soil conditions until such time as the TFN Engineer, acting reasonably, is able to determine the deficiency of the repair of the Work;

Notwithstanding the above, the TFN Engineer may waive the requirement to extend the one-year warranty period as set out above in whole or in part;

 - (f) Upon expiry of the aforesaid one (1) year period or such further term as provided herein and provided that the Developer is not then in default under any of his covenants herein contained, and upon final approval of the work by the TFN Engineer, the TFN will as soon as possible, reduce the remaining security to zero (nil).

13. The Developer covenants and agrees to indemnify and save harmless the TFN and its servants, agenda and employees from and against all actions, proceedings, costs, damages, expenses, claims and demands whatsoever and by whomsoever brought or made against the TFN or its said servants, agenda and employees, resulting directly or indirectly from the construction or installation of the work.
14. In consideration of due and proper performance by the Developer of his covenants herein contained, the TFN covenants and agrees to permit the Developer to carry out and perform the work.
15. Any demand or notice required or permitted to be given under the provisions of this agreement shall be in writing and may be given by mailing such notice by prepaid registered post to the party concerned at the address for such party first above-recited, and any such notice or demand mailed as aforesaid shall be deemed to have been received by the party to whom it is addressed on the second business day after the date of posting thereof.
16. The Developer acknowledges and agrees that immediately upon issuance by the TFN Engineer of his certification stating that work has been completed, all right, title and interest in and to the work shall immediately pass to and vest in the TFN, but nothing herein contained shall derogate from the obligation of the Developer to maintain the work for a period of one (1) year following completion as aforesaid.
17. It is understood and agreed that the TFN has made no representations, covenants, warranties, guarantees, promises or agreements (oral or otherwise) with the Developer other than those contained in this Contract.
18. Wherever the singular or masculine is used herein, the same shall be construed as meaning the plural, feminine or body corporate or politic where the context or the parties so require.
19. This Agreement and the terms, covenants and conditions herein contained shall ensure to the benefit of and be binding upon the parties, hereto and their respective heirs, executors, administrators, successors and assigns.

