

#### 4. INDEMNITIES

##### 4.1 Indemnification of District by the Owner

The Owner hereby jointly and severally:

- (a) releases and discharges the District, its officers, employees, servants, agents and invitees and covenants and agrees to indemnify and save harmless the District, its officers, employees, servants, agents and invitees from and against all damages, losses, costs, actions causes of action, claims, demands, builders' liens, liabilities, expenses, indirect or consequential damages (including the loss of profits and loss of use) which may arise or accrue to any person, firm or corporation against the District, its officers, employees, servants, agents and invitees or which the District, its officers, employees, servants, agents and invitees may pay, incur, sustain or be put to:
- (1) by reason of the District, its officers, employees, servants, agents and invitees:
    - (A) reviewing, accepting or approving the design, specifications, materials and methods for construction of the Works or any portion thereof; or
    - (B) inspecting the Works or any portion thereof; or
    - (C) performing any work in accordance with the terms of this Agreement;
  - (2) that arise out of or would not have been incurred but for:
    - (A) this Agreement; and
    - (B) the design, construction, installation and existence of the Works or any portion thereof;
- unless such damages, losses, costs, actions, causes of action, claims, demands, builders' liens, liabilities, expenses, indirect or consequential damages (including loss of profits and loss of use) relate in any way to negligent or wilful acts or omissions on the part of the District, its officers, employees, servants, agents or invitees; and
- (b) covenants and agrees to indemnify and save harmless the District, its officers, employees, servants, agents and invitees from and against all damages, losses, costs, actions, causes of action, claims, demands, builders' liens, liabilities, expenses, indirect or consequential damages (including loss of profits and loss of use) which may arise or accrue to any person, firm or corporation against the District or which the District may pay, incur, sustain or be put to, by reason of:

- (1) any negligent act or omission or wilful misconduct of the Owner or any of its invitees, licensees, contractors, subcontractors, employees, agents and permittees in connection with the exercise of the obligations of the Owner under this Agreement; or
- (2) any default in the due observance and performance of the obligations and responsibilities of the Owner under this Agreement.

#### **4.2 Survival of Indemnities**

The obligations of the Owner under Sections 2.7 and 4.1 will survive any expiration or termination of this Agreement.

### **5. GENERAL**

#### **5.1 Default by Owner**

If the Owner, having received written notice of default from the District as set out in this Agreement, shall fail to fulfil the covenants and conditions herein contained on the part of the Owner to be performed and observed, the District may, but shall be under no obligation to do so, remedy the default; and the Owner shall, forthwith following receipt of any written request from the District, pay to the District the amount of any costs from time to time incurred by the District in so doing, plus the District's normal overhead charges (which shall not exceed twenty percent (20%) of such costs). Should the Owner fail to pay to the District such costs plus overhead within thirty (30) days following delivery of such written request from the District, such amounts shall be considered to be in arrears and shall bear interest at the rate of two percent (2%) per annum above the Prime Rate, calculated monthly not in advance, from the date due until paid.

#### **5.2 Assignment Restrictions**

The Owner shall not assign their rights or obligations under this Agreement without the prior consent in writing of the District, unless the Owner has assigned its obligations to a purchaser of the Lands and that purchaser has executed and delivered to the District an assumption of the obligations of this Agreement in form and substance acceptable to the District acting reasonably.

#### **5.3 Delegation by District Engineer**

A power or discretion exercisable hereunder by the District Engineer may be exercised by his designate.

#### **5.4 Severability**

All the obligations and covenants contained in this Agreement are severable, so that if any one (1) or more of the obligations or covenants are held by or declared by a court of competent

jurisdiction to be void or unenforceable, the balance of the obligations and covenants shall remain and be binding.

### **5.5 No Derogation**

Nothing contained or implied herein shall derogate from the obligations of the Owner under any other agreement with the District or, if the District so elects, prejudice or affect the District's rights, powers, duties or obligations in the exercise of its functions pursuant to the Local Government Act and the Community Charter as amended from time to time or the functions of the Approving Officer for the District pursuant to the Land Title Act as amended from time to time and the rights, powers, duties and obligations of the District under all public and private statutes, bylaws, orders and regulations, which may be, if the District or the Approving Officer so elects, as fully and effectively exercised in relation to the Lands and Works as if this Agreement had not been executed and delivered by the Owner and the District.

### **5.6 Further Assurances**

The parties hereto shall do such things and execute such documents and in such form necessary in order to perfect the intention of this Agreement.

### **5.7 Force Majeure**

If an Event of Force Majeure occurs or is likely to occur, the Owner shall promptly notify the District of the particulars of the relevant event or circumstance and, if reasonably possible, supply supporting evidence. The Owner shall use its reasonable efforts to remove, curtail or contain the cause of the delay, interruption or failure (provided that the terms of settlement of any labour disturbance, dispute, strike or lockout shall be wholly in the discretion of the Owner) and to resume, with the least possible delay, its compliance with duties, covenants and obligations under this Agreement. Neither the District nor the Owner shall be liable to the other for any delay, interruption or failure in the performance of its duties, covenants, or obligations hereunder if caused by an Event of Force Majeure, and the date limited for the performance of such duties, covenants or obligations hereunder shall be postponed for a period equal to the delay occasioned by such an Event of Force Majeure.

### **5.8 No Waiver**

The Owner acknowledge and agree that no failure on the part of the District to exercise and no delay in exercising any right under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise by the District of any right under this Agreement preclude any other or future exercise thereof or the exercise of any other right. The remedies herein provided shall be cumulative and not exclusive of any other remedies provided by law and all remedies stipulated for the District herein shall be deemed to be in addition to and not restrictive of the remedies of the District at law or in equity.

### **5.9 Enurement**

This Agreement shall enure to the benefit of and be binding upon the Owner and the District and their respective successors, administrators and permitted assigns.

### 5.10 Notice

Any notice given under this Agreement may be well and adequately given if delivered or mailed by prepaid registered mail from any post office in British Columbia, and in the case of the Owner delivered or addressed to it at:

Porpoise Bay Developments Ltd.  
P.O. Box 4367, Station C  
Calgary, Alberta  
T2T 5N2

Attention: Gabriel Khoury

and in the case of the District delivered or addressed to it at:

District of Sechelt  
P.O. Box 129  
Sechelt, British Columbia  
V0N 3A0

Attention: Administrator

or at such other address as the parties or any successor, as the case may be, may from time to time advise by notice in writing. The date of receipt of any such notice shall be deemed to be the date of delivery of such notice, if delivered, or on the third business day next following the date of mailing, if mailed as aforesaid, provided that if mailed, should there be, between mailing and the actual receipt of such notice, a mail strike, slowdown or other labour dispute which might affect the delivery of such notice, such notice shall only be effective if actually delivered.

### 5.11 Bankruptcy

The Owner shall be deemed to be in default of its obligations under this Agreement if an order shall be made or a resolution passed for the winding up of the Owner or a petition shall be filed for the winding up of the Owner unless the same is being contested in good faith and in connection therewith, dismissed, stayed or withdrawn within sixty (60) days of the Owner receiving notice or otherwise having knowledge of the institution thereof or if the Owner shall commit any act of bankruptcy or shall become insolvent or shall make an assignment or proposal under the applicable bankruptcy legislation of any jurisdiction or a general assignment in favour of its creditors or a bulk sale of its assets or if any application is made by or with respect to the Owner under the Companies Creditors Arrangement Act (Canada) or similar legislation or if a proceeding is instituted for the winding up of the Owner or a petition in bankruptcy is filed or presented against the Owner under a bankruptcy or a similar act and if in any such case such application, proceeding or petition is not dismissed, stayed or withdrawn within sixty (60) days of the Owner receiving notice or otherwise having knowledge of the

institution thereof, or a receiver or receiver manager is appointed of any part of the assets of the Owner.

### **5.12 Latecomer Charges**

The Owner covenants and agrees that if the Works or any portion thereof shall be considered excess or extended services pursuant to Section 939 of the Local Government Act, as amended from time to time, then the length of any obligation of the District to collect latecomer's charges will not exceed fifteen (15) years after the date the Works or any portion thereof are constructed and installed and the Owner will reimburse the District for any costs whatsoever incurred by the District in the preparation and administration of any latecomer's resolutions and agreements including without limitation legal, accounting, engineering, consulting and administration costs (including those incurred internally by the District) and the Owner will not apply for nor enter into any latecomer agreements with the District with respect to the Works or any portion thereof except in accordance with the provisions of this section and the Owner hereby releases and discharges the District, its officers, employees, servants, agents and invitees and covenants and agrees to indemnify and save harmless the District, its officers, employees, servants, agents and invitees from and against all damages, losses, costs, actions, causes of action, claims, demands and expenses (including legal fees and litigation costs) which may arise or accrue to any person, firm or corporation against the District, its officers, employees, servants, agents and invitees for which the District, its officers, employees, servants, agents and invitees may pay, incur, sustain or be put to by reason of the application of Section 939 of the Local Government Act as amended from time to time.

### **5.13 Administration Fee**

The Owner covenants and agrees to pay to the District prior to the return of the letter of credit pursuant to Section 3.3 a non-refundable administration fee in an amount determined by the District Engineer to cover the District's administration and processing costs less any costs incurred by the District pursuant to Sections 2.1(e) and (j). The amount of the administration fee will be determined as a percentage of the amount of the Works.

### **5.14 Time**

Time shall be of the essence of this Agreement.

### **5.15 Laws of British Columbia**

This Agreement shall be governed by and construed and enforced in accordance with the laws of the Province of British Columbia.

### **5.16 Gender**

If the singular, masculine or neuter is used in this Agreement, the same will be deemed to include references to the plural, feminine or body corporate according to the context of which it is used.

### 5.17 Capacity and Authority

The Owner represents and warrants to and covenants and agrees with the District that:

- (a) it has the full and complete power, authority and capacity to enter into, execute and deliver this Agreement and to bind all legal and beneficial interests in the title to the Lands with the interests in land created hereby;
- (b) upon execution and delivery of this Agreement and registration thereof, the interests in land created hereby, including the provisions of Sections 6.1 and 7.1 will encumber all legal and beneficial interests in the title to the Lands;
- (c) this Agreement shall be fully and completely binding upon the Owner in accordance with the terms hereof and the Owner will perform all of their obligations under this Agreement in accordance with the terms hereof; and
- (d) the foregoing representations, warranties, covenants and agreements shall have force and effect notwithstanding any knowledge on the part of the District whether actual or constructive concerning the status of the Owner with regard to the Lands or any other matter whatsoever.

### 5.18 Priority

The Owner will, after the execution of this Agreement by all parties hereto in registrable form, do or cause to be done, at its own cost and expense, all things and actions necessary to ensure that this Agreement is registered against title to the Lands with priority over all encumbrances which permit the exercise of any rights or remedies which might prejudice the rights granted to the holders of the easements, statutory rights-of-way and section 219 covenant herein granted, except encumbrances in favour of the District over which the District has given written approval. If the Land Title Office rejects the registration of this Agreement then the parties hereto will re-register same in a form and style acceptable to the Land Title Office and to the parties hereto.

### 5.19 Prime Contractor

Pursuant to Section 118 of the *Workers' Compensation Act*, R.S.B.C. 1996, c.492 (as amended) (the "WCA") the parties hereby acknowledge and agree that in respect of all matters pertaining to the Works and this Agreement the Owner shall be the prime contractor as defined in the WCA for the purposes of the WCA and shall discharge the responsibilities of the prime contractor under the WCA and the Occupational Health and Safety Regulation, B.C. Reg. 296/97. Without limiting the foregoing the parties covenant and agree that nothing in this Agreement shall make the District the prime contractor under the WCA.

## **6. DEVELOPMENT COST CHARGES**

### **6.1 DCC Program**

The District has, by bylaw, adopted a Development Cost Charge (DCC) Program. The DCC program provides, among other things, for the payment of DCCs for the construction of highway facilities (Road DCCs) and DCCs to improve park land (Park DCCs).

### **6.2 Road DCC Credits**

The District acknowledges that certain portions of the Works pertain to roads and parks within the District's DCC program and the Owner will be entitled to set off the costs of constructing those roads against Road DCCs payable in respect of the Lands ("Road DCC Credits") and the costs of improving those parks against Park DCCs payable in respect of the Lands ("Park DCC Credits").

### **6.3 Section 941**

The District acknowledges that those portions of the Works described as park ("Park Site") that are, in total, equal in area to not more than five percent (5%) of the area of the Lands are provided in satisfaction of the Owner's obligations under Section 941 of the *Local Government Act*.

### **6.4 Calculation of Road DCC Credits**

Within one hundred and twenty (120) days of the completion of the construction of those portions of the Works contained within the District's DCC Program, the Owner will submit to the District the actual cost of constructing those portions of the Works contained within the District's DCC Program together with such supporting documentation as may be required by the District. Within sixty (60) days of the receipt of the foregoing information, the District will determine the final cost of constructing those portions of the Works contained within the District's DCC Program and advise the Owner of the final costs and the amount of the Road DCC Credits and the Park DCC Credits.

### **6.5 Deduction of DCC Credits**

Upon the subdivision or development of the Lands, the Owner will be entitled to deduct DCC Credits from DCCs payable at that time. The Owner covenants and agrees that Road DCC Credits may only be deducted from Road DCCs and Park DCC Credits may only be deducted from Park DCCs upon the subdivision or development of the Lands.

### **6.6 Allocation of DCC Credits**

The Owner covenants and agrees that in the event Road DCCs or Park DCCs payable upon the subdivision or development of the Lands exceed the amount of the Road DCC Credits or Park DCC Credits as the case may be the Owner will be obligated to pay the difference to the District on the date that the DCCs are due and payable. The Owner further covenants and agrees that in the event Road DCCs or Park DCCs payable upon the subdivision or development of a portion of the Lands are less than the amount of the Road DCC Credits or the Park DCC Credits

as the case may be, the unused portion of the respective Road DCC Credits or Park DCC Credits will remain with the remainder of the Lands and may be applied to the next portion of the Lands to be subdivided or developed but the Owner shall not be entitled of any reimbursement for any unused portion of the Road DCC Credits or the Park DCC Credits as the case may be at the end of the Project.

#### **6.7 Monies Owed to the District**

The Owner covenants and agrees that it will not be entitled to deduct Road DCC Credits and Park DCC Credits from Road DCCs or Park DCCs if at the time said Road DCCs and Park DCCs are payable monies are owed to the District by the Owner under this Agreement.

#### **6.8 Sale of Lands**

The Owner covenants and agrees with the District that upon any sale, transfer or conveyance of any portion of the Lands or strata lot created within a portion of the Lands, to any person, trust, corporation, partnership or other entity, the Owner shall incorporate in any contract of purchase and sale with an initial purchaser of said portion of the Lands, an explicit acknowledgement that said purchaser is not entitled to the benefit of any of the Road DCC Credits or Park DCC Credits described herein.

### **7. STATUTORY RIGHT-OF-WAY**

#### **7.1 Statutory Right-of-Way**

Pursuant to Section 218 of the Land Title Act R.S.B.C. 1996 Ch. 250 as amended, the Owner hereby grants the District, its contractors, subcontractors, employees, agents and officials the full, free and uninterrupted right, liberty and easement by way of a statutory right-of-way to enter, labour, go, pass, repass, beyond, under, along and over the Lands with or without men or women, vehicles including all emergency vehicles and equipment and supplies for any purpose connected with this Agreement or the District's constructing, inspecting, repairing or maintaining the Works or any portion thereof. This statutory right-of-way is necessary for the operation and maintenance of the District's undertaking. This statutory right-of-way shall run with the Lands.

### **8. 219 COVENANT**

#### **8.1 Section 219 Covenant**

Pursuant to section 219 of the Land Title Act of British Columbia the Owner covenants with the District that:

- (a) the Lands shall not be further subdivided beyond the Initial Subdivision Plan prior to the District Engineer accepting the final engineering plans, drawings and specifications pursuant to Section 2.1(d) of this Agreement for the Road Works and for those portions of the Park Works to be developed in conjunction with the Lots described in Schedule B prior to the commencement of development of those Lots;

- (b) the Owner shall not suffer, cause or permit the excavation of the Lands or the construction of any foundations, buildings or structures on the Lands and the Owner shall not suffer, cause or permit any application to excavate or construct such foundations, buildings or structures to be submitted to the District prior to the District Engineer accepting the final engineering plans, drawings and specifications pursuant to Section 2.1(d) of this Agreement for the Road Works and for those portions of the Park Works to be developed in conjunction with the Lots described in Schedule B prior to the commencement of development of those Lots; and
- (c) if the construction of the Works has not been completed by the Works Completion Date, the Owner will not apply for or be issued a permit for the excavation of the Lands or for construction of foundations, buildings or structures on any portion of the Lands until the construction of the Works has been completed.

This covenant shall enure to the benefit of and be binding upon the District and its successors and assigns; and this covenant shall enure to the benefit of and be binding upon the Owner and its successors and trustees and this covenant shall run with the land and enure to the benefit of and be binding upon the Owner's successors in title to the Lands and their respective heirs, executors, administrators, trustees and successors. In any action concerning this covenant the District shall be entitled to court costs on a solicitor-client basis.

IN WITNESS WHEREOF the parties have executed this Agreement in Item 8 of the General Instrument - Part 1.

DRAFT

**SCHEDULE A**  
**Off-Site Works**

**1. Sewer Water and Drainage**

- (a) construction of a grey water line from the Lands to the existing and proposed sewer treatment plants at Dusty Road;

**2. Roads**

**2.1 Sechelt Inlet Road**

- (a) widening of Sechelt Inlet Road at the intersection adjacent to Lots 8, 9, 12 and 13;
- (b) widening of Sechelt Inlet Road at the intersection adjacent to Lots 36 and 38;
- (c) widening of Sechelt Inlet Road at the intersection adjacent to Lot 34;
- (d) widening of Sechelt Inlet Road to road collector standard (11 metres)
  - (1) between Wharf Street and Delta Road;
  - (2) between Dusty Road and the Lands at the boundary of the Sechelt Nation Land;
  - (3) on the Sechelt Nation Land between Lot 10 and Lot 38;
  - (4) from the Sechelt Nation Land north boundary to Sechelt Heritage Forest;
- (e) resurfacing Sechelt Inlet Road
  - (1) between Wharf Street and Delta Road;
  - (2) between Dusty Road and the Lands at the boundary of the Sechelt Nation Land;

**2.2 Wharf Road and Highway 101**

- (a) modify traffic signal turning to include south bound Wharf Road left turn advance phase;
- (b) improve intersection (eg. new signals, pavement markings, etc.);
- (c) upgrade intersection to accommodate ultimate increased traffic from the Lands.

### **3. Parks**

#### **3.1 Waterfront Park**

- (a) develop and construct waterfront park on Lot 1;

#### **3.2 Community Park**

- (a) develop and construct community park on Lot 12;
- (b) develop and construct trail on the road allowance south of the Lands between Lot 5 and Lot 19;
- (c) develop and construct trail along the north boundary of the Lands between Sechelt Inlet Road and the eastern boundary of the Lands.

#### **3.3 Design and Features**

- (a) Without limiting the generality of 3.1(a) and 3.2(a) above the Owner and the District shall, upon execution of this Agreement, enter into good faith discussions concerning the design and features of the waterfront park and the community park and the District shall finalize said design and features within one (1) year of the date of this Agreement. Without limiting the generality of the foregoing the District acknowledges the desire of the Owner to have the features of the waterfront park constructed to a standard equal to or greater than that of the buildings constructed or to be constructed on the lots adjacent to the waterfront park.

### **4. Shannon Creek**

- (a) develop and construct additional salmon channel on Shannon Creek.