

LAND EXCHANGE AGREEMENT

THIS AGREEMENT dated for reference the 1st day of April, 2017 is

BETWEEN:

TOWN OF GIBSONS, PO Box 340, Gibsons, British Columbia, V0N 1V0

(the "Town")

AND:

THE GEORGE GIBSONS DEVELOPMENT LTD. (Inc. No. BC0323021), PO Box 570, Gibsons, British Columbia, V0N 1V0

("GG Development")

AND:

KLAUS FUERNISS and MONIKA FUERNISS, PO Box 570, Gibsons, British Columbia, V0N 1V0

(the "Fuernisses")

WHEREAS:

- A. The Town has ownership and possession of the dedicated highway created by the deposit of Plan 5579, commonly known as Winn Road (the "Road");
- B. GG Development is the registered owner in fee simple of those lands and premises located in Gibsons, British Columbia, legally described as: Parcel Identifier: 011-118-202, Lot 1, Except the East 157 Feet Block A District Lot 685 Plan 5579; Parcel Identifier: 011-118-211, Lot 2 Block A District Lot 685 Plan 5579; Parcel Identifier: 007-359-829, Lot 1 Block A District Lot 686 Plan 14197; Parcel Identifier: 007-359-870, Lot 2 Block A District Lot 686 Plan 14197 (together, the "GG Development Lands");
- C. The Fuernisses are the registered owners in fee simple of those lands and premises located in Gibsons, British Columbia, legally described as Parcel Identifier: 011-117-524, Lot A (See 450146L) of Lot 1 Block A District Lot 685 Plan 5579 (the "Fuerniss Lands");
- D. Together, the GG Development Lands and the Fuerniss Lands comprise the "Development Lands";
- E. The Town has agreed to transfer a portion of the Road to the Owners for consolidation with the Development Lands and the Owners have agreed to dedicate a portion of the Development Lands for road purposes, all on the terms and conditions of this Agreement;

NOW THEREFORE in consideration of the payments, premises, and promises contained in this Agreement, and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by the parties), the parties covenant and agree as follows:

ARTICLE 1 INTERPRETATION

Definitions

1.1 In this Agreement, in addition to the words defined in the recitals to it:

- (a) “Air Space Agreement” means the agreement providing for easements over and for the reciprocal benefit of the Air Space Parcel and the Remainder respecting support, utilities, and access, to be registered as a condition of approval of the Air Space Plan, concurrently with the deposit of the Air Space Plan with the LTO, which agreement shall also include a covenant under section 219 of the *Land Title Act* in favour of the Town prohibiting the discharge or modification of the Air Space Agreement without the consent of the Town, substantially in the form attached as Schedule “C”.
- (b) “Air Space Parcel” means a volumetric parcel located below the Road Dedication Area, created by deposit of the Air Space Plan pursuant to section 142 of the *Land Title Act*, and having dimensions sufficient to fully encompass the portion of underground parkade proposed by the Owners in connection with the Development below the Road Dedication Area, including perimeter drainage and any ancillary works.
- (c) “Air Space Parcel Transfer” means a transfer in registrable form transferring the estate in fee simple of the Air Space Parcel to the Owners.
- (d) “Air Space Plan” means a plan to create an air space parcel below the Road Dedication Area pursuant to section 142 of the *Land Title Act*.
- (e) “Air Space Subdivision Approvals” means the consents, permits, permissions and approvals needed for the completion of the subdivision of the Air Space Parcel, including as evidenced by the signature of the Approving Officer for the Town on the Air Space Plan and the settlement and finalization of the Air Space Agreement.
- (f) “Business Day” means a day other than a Saturday, Sunday or statutory holiday in British Columbia.
- (g) “Closed Road Transfer” means a transfer in registrable form transferring the estate in fee simple of the Road Closure Area to the Owners.
- (h) “Completion Date” means the date that is 30 days after the date that all conditions precedent under Article 3 have been satisfied or, where permitted, waived, unless that date is not a Business Day, in which case the Completion Date will be the next

following Business Day, but in no event shall the Completion Date be later than December 31, 2018.

- (i) “Contaminants” means:
 - (i) as defined in the *Environmental Management Act* (British Columbia), any biomedical waste, contamination, contaminant, effluent, pollution, recyclable material, refuse, hazardous waste or waste;
 - (ii) matter of any kind which is or may be harmful to human safety or health or to the environment; or
 - (iii) matter of any kind the storage, manufacture, disposal, emission, discharge, treatment, generation, use, transport, release, remediation, mitigation or removal of which is now or is at any time required, prohibited, controlled, regulated or licensed under any Environmental Laws.
- (j) “Development” means the Owners’ proposed development of the Development Lands, as defined in the development covenant registered against title to the Development Lands under charge number CA4741913.
- (k) “Environmental Law” means any past, present or future common law or principle, enactment, statute, regulation, order, bylaw or permit, and any requirement, standard or guideline of any federal, provincial or local government authority or agency having jurisdiction, relating to the environment, environmental protection, pollution or public or occupational safety or health.
- (l) “Extension Agreements” means any agreements required to extend necessary charges over the Road Closure Area.
- (m) “GST” means any tax levied under Part IX of the *Excise Tax Act* (Canada) as the same may be amended or replaced from time to time, including for certainty, goods and services tax, as applicable.
- (n) “LTO” means the Vancouver Land Title Office.
- (o) “Owners” means, together, GG Development and the Fuernisses.
- (p) “Owners’ Solicitors” means Dentons Canada LLP.
- (q) “Permitted Encumbrances” means the reservations and exceptions contained in section 50 of the *Land Act* (British Columbia).
- (r) “Purchase Price” means the purchase price for the Air Space Parcel in the amount of \$61,600.00, which amount does not include GST.

- (s) “Remainder” means the remainder of the Road Dedication Area excluding the Air Space Parcel.
- (t) “Road Closure Area” means that portion of the Road having an area of approximately 950 square metres, shown outlined in bold and labelled “Closed Road” on the sketch attached as Schedule “A” hereto.
- (u) “Road Closure Bylaw” means a bylaw of the Town of Gibsons closing to traffic that part of the Road constituting the Road Closure Area and removing its dedication as highway pursuant to section 40 of the *Community Charter* (British Columbia).
- (v) “Road Closure Plan” means a survey plan to close the Road Closure Area.
- (w) “Road Dedication Area” means that portion of the Development Lands having an area of approximately 950 square metres, shown outlined in bold and labelled “Plaza” on the sketch attached as Schedule “A” hereto.
- (x) “Road Dedication Subdivision Approvals” means the consents, permits, permissions and approvals needed for the dedication of the Road Dedication Area, including as evidenced by the signature of the approving officer for the Town on the Subdivision Plan and the settlement and finalization of all Utility SRWs.
- (y) “Subdivision Plan” means a survey plan to consolidate the Road Closure Area with the Development Lands and to dedicate the Road Dedication Area as road pursuant to section 107 of the *Land Title Act*.
- (z) “Town’s Solicitors” means Young, Anderson.
- (aa) “Utility SRWs” means statutory right(s) of way for any public utilities (including Town utilities) with works currently in place on the Road Closure Area or who have notified the Town that the closure and disposition of the Road Closure Area will negatively affect their undertaking.
- (bb) “Waterfront SRW/Covenant” means a statutory right of way under section 218 of the *Land Title Act* in favour of the Town, granting the Town use of the Waterfront Walkway and Pier, as those terms are defined in the development covenant registered against title to the Development Lands under charge number CA4741913, for public use and access purposes in perpetuity, which agreement shall include a covenant under 219 of the *Land Title Act* in favour of the Town for maintenance purposes, substantially in the form attached as Schedule “D”.
- (cc) “Waterworks SRW” means a statutory right of way in favour of the Town pursuant to section 218 of the *Land Title Act*, for existing water and stormwater utility works located within the Development Lands and the Road, substantially in the form attached as Schedule “E”.

- (dd) “Winn Road SRW” means a statutory right of way in favour of the Town pursuant to section 218 of the *Land Title Act*, granting the Town use of the Road Closure Area for public access purposes until such time as the Owner commences construction of the Development thereon and, following commencement of construction, allowing the Town to reinstate its use of the Road Closure Area for public access purposes in the event that the Owner has not completed construction of the Development on or before December 31, 2022, substantially in the form attached as Schedule “B”.

ARTICLE 2 LAND EXCHANGE

Transfers and Payments

2.1 On the Completion Date:

- (a) the Town will transfer the Road Closure Area to the Owners, free and clear of all registered liens, charges, and encumbrances, except for the Permitted Encumbrances, the Winn Road SRW, and the Utility SRWs (if any);
- (b) the Owners will dedicate the Road Dedication Area as road or otherwise cause the Road Dedication Area to be created as a separate subdivided parcel and transfer the Road Dedication Area to the Town;
- (c) the Town will transfer the Air Space Parcel to the Owners;
- (d) the Owners will pay the Purchase Price to the Town; and
- (e) the Owners will grant the Waterfront SRW/Covenant and the Waterworks SRW to the Town,

all on the terms and conditions of this Agreement.

Valuation

- 2.2 The parties agree that the value of the Road Closure Area is equivalent to the value of the Road Dedication Area.
- 2.3 For the purpose of calculating any Property Transfer Tax and GST payable with respect to the Road Closure Area, the parties agree that the Road Closure Area has a market value of \$560,000.00 and the Air Space Parcel has a market value of \$61,600.00. For the purpose of the transfer of the Road Dedication Area to the Town, the parties agree that the Road Dedication Area has a market value of \$560,000.00.

ARTICLE 3 CONDITIONS PRECEDENT**Conditions Precedent**

3.1 The completion of the land exchange contemplated by this Agreement is subject to the fulfilment of the following conditions precedent:

- (a) The Council of the Town of Gibsons, in its sole discretion, will have adopted the Road Closure Bylaw. For greater certainty, the Owners agree, at their cost and expense, to cause a qualified and licensed surveyor to prepare the Road Closure Plan.

- (b) All Road Dedication Subdivision Approvals necessary for the consolidation of the Road Closure Area with the Development Lands and the dedication of the Road Dedication Area in the LTO will be obtained. For greater certainty, the Owners agree, at their cost and expense, as follows:
 - (i) to cause a qualified and licensed surveyor to prepare the Subdivision Plan;
 - (ii) following preparation of the Subdivision Plan, to apply for and diligently pursue all Road Dedication Subdivision Approvals, by submitting completed applications to such authorities whose approval of the Subdivision Plan is required, and by obtaining signatures from all required signatories to the Subdivision Plan; and
 - (iii) to determine which charges, if any, require extensions over the Road Closure Area and prepare and arrange for execution of the necessary Extension Agreements.

In connection with the consolidation of the Road Closure Area with the Development Lands and the dedication of the Road Dedication Area, the Owners agree with the Town that the Owners shall be responsible, at their sole cost and expense, for the payment of all fees, costs and charges related to the consolidation of the Road Closure Area with the Development Lands and the dedication or transfer to the Town of the Road Dedication Area, including, but not limited to, the preparation and approval of the Subdivision Plan and all applications necessary for obtaining the Road Dedication Subdivision Approvals.

- (c) All Air Space Subdivision Approvals necessary for the creation of the Air Space Parcel in the LTO will be obtained. For greater certainty, the Owners agree, at their cost and expense, as follows:
 - (i) to cause a qualified and licensed surveyor to prepare the Air Space Plan;
 - (ii) following preparation of the Air Space Plan, to apply for and diligently pursue all Air Space Subdivision Approvals, by submitting completed

applications to such authorities whose approval of the Air Space Plan is required, and by obtaining signatures from all required signatories to the Air Space Plan.

In connection with the creation of the Air Space Parcel, the Owners agree with the Town that the Owners shall be responsible, at their sole cost and expense, for the payment of all fees, costs and charges related to the creation of the Air Space Parcel, including, but not limited to, the preparation and approval of the Air Space Plan and all applications necessary for obtaining the Air Space Subdivision Approvals.

- (d) The Owners will have removed all existing permanent buildings and structures from the Road Dedication Area, to the satisfaction of the Town.
- (e) The Owners will have obtained development permits for Development Permit Areas No. 1, No. 2 and No. 9, as required by Town of Gibsons Official Community Plan Bylaw No. 985, 2005 in connection with the Development.

The parties agree that conditions precedent (a), (b), (c), and (e) above are for the benefit of both the Town and the Owners and may not be waived. If those conditions are not satisfied by the outside Completion Date, this Agreement is at an end and each of the parties will have no further obligations to, nor rights against, the other in respect of this Agreement.

The parties agree that condition precedent (d) above is for the sole benefit of the Town and may be waived by the Town in writing. If that condition is not satisfied or waived by the outside Completion Date, this Agreement is at an end and each of the parties will have no further obligations to, nor rights against, the other in respect of this Agreement. In consideration of \$10.00 now paid by the Town to the Owners, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Owners, the Owners agree not to revoke their acceptance of this offer while this Agreement remains subject to condition precedent (d).

No Derogation

- 3.2 Nothing contained or implied in this Agreement will impair or affect the Town's rights and powers in the exercise of its functions pursuant to the *Community Charter* (British Columbia) or any other enactment and all such powers and rights may be fully exercised in relation to the Development Lands and the Road Closure Area as if this Agreement had not been entered into between the Owners and the Town. The Owners acknowledge that fulfillment of the conditions precedent set out in this Agreement may require that the Council of the Town of Gibsons adopt bylaws or pass resolutions and that the passage of said resolutions or adoption of said bylaws by the Council of the Town of Gibsons are within its sole absolute discretion which is not in any manner subject to the provisions hereof.

ARTICLE 4 TRANSFERS**Transfer of Title and Possession**

4.1 On the Completion Date,

- (a) the Town will:
 - (i) convey the estate in fee simple of the Road Closure Area to the Owners free and clear of all liens, charges, and encumbrances, except for the Permitted Encumbrances, the Utility SRWs, and the Winn Road SRW; and
 - (ii) give vacant possession of the Road Closure Area to the Owners, subject only to the Permitted Encumbrances, the Utility SRWs, and the Winn Road SRW;

- (b) the Owners will:
 - (i) consolidate the Road Closure Area with the Development Lands;
 - (ii) dedicate the Road Dedication Area as road or transfer the Road Dedication Area to the Town as a separate subdivided parcel, free and clear of all liens, charges and encumbrances except for the reservations and exceptions contained in section 50 of the *Land Act*; and
 - (iii) grant the Waterfront SRW/Covenant and the Waterworks SRW to the Town;

and

- (c) the Town will:
 - (i) raise title to the Road Dedication Area, if required, and subdivide the Road Dedication Area to create the Air Space Parcel pursuant to section 142 of the *Land Title Act*;
 - (ii) transfer the Air Space Parcel to the Owners free and clear of all liens, charges, and encumbrances, except for the Permitted Encumbrances and the Air Space Agreement; and

- (d) give vacant possession of the Air Space Parcel to the Owners, subject only to the Permitted Encumbrances and the Air Space Agreement.

Adjustments

4.2 There will be no adjustments in respect of the transfers contemplated by this Agreement.

Closing Documents

4.3 A reasonable time before the Completion Date, the Owners will cause the Owners Solicitors to deliver to the Town's Solicitors the following documents, duly executed on behalf of the Owners where applicable:

- (a) the Closed Road Transfer;
- (b) the Air Space Parcel Transfer;
- (c) the Air Space Agreement;
- (d) the Waterfront SRW/Covenant;
- (e) the Waterworks SRW; and
- (f) a joint statement of adjustments showing adjustments for GST only.

The Town will then execute and return:

- (g) the Closed Road Transfer;
- (h) the Air Space Parcel Transfer;
- (i) the Air Space Agreement;
- (j) the Waterfront SRW/Covenant;
- (k) the Waterworks SRW;
- (l) the joint statement of adjustments; and
- (m) the Subdivision Plan and its associated plan application form,

to the Owners' Solicitors, on undertakings satisfactory to the Town's Solicitors, acting reasonably.

Completion

4.4 On or before the Completion Date:

- (a) the Owners will pay to the Owners' Solicitors, in trust, the Purchase Price, plus the amount of any GST payable;
- (b) forthwith after payment by the Owners of the amount under section 4.4(a) to the Owners' Solicitors in trust, and after confirmation of receipt by the Owners' Solicitors of documents under section 4.3, the Town will cause the Town's

Solicitors to register documents (i) through (v) and (xi) through (xiii), and the Owners will cause the Owners' Solicitors to register documents (vi) through (x) and (xiv) in the LTO on the Completion Date, in the order listed below, on a concurrent basis and as an "all or nothing" package for registration, to be arranged by way of an electronic meet:

- (i) the Road Closure Bylaw and Road Closure Plan;
 - (ii) a Form 17 to raise title to the Road Closure Area;
 - (iii) a Form 17 to apply to cancel the Province's right of resumption in the Road Closure Area;
 - (iv) the Utility SRWs;
 - (v) the Winn Road SRW;
 - (vi) the Closed Road Transfer and associated Property Transfer Tax Return and cheque;
 - (vii) the Subdivision Plan, with application form;
 - (viii) the Extension Agreements, if any;
 - (ix) the Waterfront SRW/Covenant;
 - (x) the Waterworks SRW;
 - (xi) a Form 17 to raise title to the Road Dedication Area;
 - (xii) the Air Space Plan;
 - (xiii) the Air Space Agreement;
 - (xiv) the Air Space Parcel Transfer and associated Property Transfer Tax Return and cheque;
- (c) upon the final registration of documents (i) through (xiv) in the LTO, such that the Owners are the registered owners in fee simple of the Road Closure Area, subject only to the Permitted Encumbrances, the Utility SRWs, the Waterworks SRW, and the Winn Road SRW, and the Owners are the registered owners in fee simple of the Air Space Parcel, subject only to the Permitted Encumbrances and the Air Space Agreement, the Owners will cause the Owners' Solicitors to deliver directly to the Town a solicitor's trust cheque made payable to the TOWN OF GIBSONS in the amount of the Purchase Price, plus the amount of any GST payable pursuant to section 4.6.

The requirements of this section are concurrent requirements and this transaction will not be considered to be complete until everything required to be done by this section is done.

Owners' Financing

- 4.5 Notwithstanding section 4.4, if the Owners are relying on a new mortgage (the "Mortgage") to finance the Purchase Price, the Owners, while still required to pay the Purchase Price on the Completion Date, may wait to pay the Purchase Price to the Town until after the Air Space Parcel Transfer and Mortgage documents have been fully registered in the LTO, but only if, prior to such registration, the Owners have:
- (a) fulfilled all of the Mortgage conditions for registration of the Mortgage; and
 - (b) provided to the Town's Solicitors an undertaking from the Owners' Solicitors to pay the Purchase Price to the Town's Solicitors upon the registration of the Air Space Parcel Transfer and Mortgage documents and the advance by the mortgagee of the Mortgage proceeds.

GST

- 4.6 On the Completion Date, the Owners will pay to the Town any GST payable under the *Excise Tax Act* (Canada) in respect of the transfer of the Road Closure Area.

Risk

- 4.7 The Road Closure Area is at the Town's risk until 12:00 noon on the Completion Date and at the Owners' risk thereafter. The Road Dedication Area is at the Owners' risk until 12:00 noon on the Completion Date and at the Town's risk thereafter. The Air Space Parcel is at all times at the Owners' risk.

Air Space Parcel Boundaries

- 4.8 It is the intention of the parties that the Air Space Parcel will encompass the actual external boundaries of the underground parkade to be constructed by the Owners in connection with the Development, or portion thereof located below the Remainder, as shown on the plans associated with the Owners' development permit and building permit for the Development. The Owners will, at their sole expense, resurvey the boundaries of the Air Space Parcel upon completion of construction of the Development and if such survey discloses any material deviation between the as-built boundaries of the underground parkade and the corresponding boundaries of the Air Space Parcel such that any portion of the underground parkade encroaches into the Remainder, the Town will grant an encroachment easement to the Owners for the portion of the underground parkade that is within the Remainder, and the Owners will pay for the cost of the associated survey plan, all costs for the preparation of the easement agreement, and all costs of registration.

**ARTICLE 5 OWNERS' REPRESENTATIONS, WARRANTIES, COVENANTS,
ACKNOWLEDGMENTS AND AGREEMENTS**

Owners' Representations, Warranties and Covenants

- 5.1 The Owners represent and warrant to the Town that the following are true on the date the Owners execute this Agreement, and covenant with the Town that the following will be true on the Completion Date:
- (a) the Owners have taken all necessary or desirable actions, steps and other proceedings to approve or authorize, validly and effectively, the entering into, and the execution, delivery and performance of this Agreement;
 - (b) if any of the Owners is a company, that Owner is duly incorporated and validly existing under its jurisdiction of incorporation, is in good standing under the legislation governing it and has made all filings required under such legislation; and
 - (c) the Owners have the power and capacity to enter into and carry out the transactions provided for in this Agreement.

Acknowledgments and Agreements of the Owners

- 5.2 The Owners acknowledge and agree that:
- (a) the Town transfers and the Owners acquire the Road Closure Area on an "as is" basis and condition;
 - (b) the Town has not made any representations, warranties or agreements as to the condition or quality of the Road Closure Area, including as to:
 - (i) the subsurface nature or condition of the Road Closure Area (including soil type, hydrology, and geotechnical quality or stability);
 - (ii) the environmental condition of the Road Closure Area (including regarding Contaminants in, on, under or migrating to or from the Road Closure Area) or regarding the compliance of the Road Closure Area, or past or present activities on it, with any Environment Laws;
 - (iii) the suitability of the Road Closure Area for any particular use or development; or
 - (iv) access to or from the Road Closure Area;
 - (c) it is the sole responsibility of the Owners to satisfy themselves with respect to the matters referred to in section 5.2(b), including by conducting any reports, tests,

investigations, studies, audits, and other enquiries that the Owners, in their sole discretion, consider prudent;

- (d) the Owners have not relied, and will not rely, upon any documentation or information regarding the Road Closure Area that may have been provided by or on behalf of the Town to the Owners prior to the Owners' execution of this Agreement or that may be provided following such execution and the Owners hereby release the Town from any and all liability associated with its use or reliance upon any documentation or information provided at any time to the Owners by the Town or any of its elected and appointed officials, employees, contractors or agents;
- (e) effective from and after the Completion Date:
 - (i) the Owners assume and are solely responsible for, and release the Town (and its elected and appointed officials, employees, contractors, and agents) from and against any and all actions, causes of action, liabilities, demands, claims, losses, damages, costs (including remediation costs (as defined in the *Environmental Management Act* (British Columbia)), the costs of complying with any Environmental Laws and any consultant and legal fees, costs and disbursements), expenses, fines and penalties whether occurring, incurred, accrued or caused before, on or after the Completion Date, which the Owners or any other person has or may have arising out of or in any way related to or in connection with the Road Closure Area, including the presence of Contaminants in, on, under or migrating to or from the Road Closure Area, and any mandatory or voluntary remediation, mitigation or removal of any Contaminants; and
 - (ii) except where such actions, causes of action, liabilities, demands, claims, losses, and costs arise from the misconduct or negligence of the Town, its employees, contractors, agents and persons for whom the Town is responsible at law, after the Completion Date, will indemnify and save harmless the Town (and its elected and appointed officials, employees, contractors, and agents) from and against any and all actions, causes of action, liabilities, demands, claims, losses, damages, costs (including remediation costs (as defined in the *Environmental Management Act* (British Columbia)), the costs of complying with any Environmental Laws and any consultant and legal fees, costs and disbursements), expenses, fines and penalties whether occurring, incurred, accrued or caused before, on or after the Completion Date, which the Town, or its elected or appointed officials, employees, contractors or agents, may suffer, incur, be subject to or liable for, whether brought against anyone or more of them by the Owners or any other person, or any government authority or agency, arising out of or in any way related to or in connection with the

Road Closure Area, including the presence of Contaminants in, on, under or migrating to or from the Road Closure Area, and any mandatory or voluntary remediation, mitigation or removal of any Contaminants;

- (f) without limiting the rest of this section 5.2, and subject to the exception set out in section 5.2 (e)(ii), for the purpose of allocation of remediation costs pursuant to the *Environmental Management Act* (British Columbia), including and after the Completion Date, the Owners will be, as between the Town and the Owners, solely responsible for the costs of any mandatory or voluntary remediation of the Road Closure Area under that Act and this binds the Owners with respect to any allocation of remediation costs, as defined by that Act, by any procedure under that Act; and
- (g) the Town has not made any representations, warranties or agreements with the Owners as to whether or not any GST is payable by the Owners in respect of the transfer of Road Closure Area to the Owners.

Site Profile

- 5.3 The Owners hereby waive delivery by the Town of a site profile under the *Environmental Management Act* (British Columbia).

ARTICLE 6 MISCELLANEOUS

Fees and Taxes

- 6.1 The Owners will pay, as and when due and payable:
 - (a) any property transfer tax payable under the *Property Transfer Tax Act* (British Columbia) in connection with the transfer of the Road Closure Area and the Air Space Parcel to the Owners;
 - (b) all costs of the subdivisions contemplated by this Agreement including without limitation all legal, survey, and administration costs incurred by the Town in connection with those subdivisions;
 - (c) all costs of the closure and removal of highway dedication contemplated by this Agreement including without limitation all legal, survey, and administrative costs incurred by the Town in connection with the closure and removal of the highway dedication;
 - (d) all LTO registration fees in connection with transfers contemplated by this agreement, including registration of all documents to be registered on the Completion Date pursuant to subsection 4.4(b);

- (e) its own legal fees and disbursements and the Town's legal fees and disbursements in connection with this Agreement and the transactions contemplated by it;
- (f) any GST payable under the *Excise Tax Act* (Canada) in respect of the transfer of the Road Closure Area and the Air Space Parcel to the Owners, with the Owners and the Town agreeing that the Purchase Price does not include GST; and
- (g) the costs of removing and relocating any existing Town utilities located within the Development Lands and the Road Closure Area, which removal and relocation may only be undertaken with the Town's prior consent.

6.2 The Town will pay any property transfer tax payable under the *Property Transfer Tax Act* (British Columbia) in connection with the transfer of the Road Dedication Area to the Town.

Preparation of Conveyance Documents

6.3 The Owners will, at their expense, prepare all necessary conveyancing documentation in connection with the transfers contemplated by this Agreement, including the Closed Road Transfer, but excluding the documents associated with the Road Closure Bylaw and Road Closure Plan (including the requisite Form 17s), which shall be prepared by the Town's Solicitors at the Owners' expense.

Access

6.4 Subject to compliance with all reasonable work and safety requirements imposed by the Owners or their contractors, and subject to all applicable WorkSafeBC requirements, the Owners and their agents, contractors, and employees have a licence, exercisable on 48 hours prior written notice to the Town, to enter upon the Road Closure Area from time to time prior to the Completion Date, at the Owners' sole risk and expense, for the purpose of making inspections, surveys, tests, and studies of the Road Closure Area. The Owners agree to:

- (a) release and indemnify, and hold harmless, the Town from and against any and all actions, causes of actions, liability, demands, losses, costs, and expenses (including legal fees and disbursements) which the Town or any third party may suffer, incur, be subject to or liable for, arising out of or in any way related to or in connection with the exercise by the Owners of their rights under this section; and
- (b) leave the Road Closure Area in the same condition as that in which the Owners found the Road Closure Area, including by removing any equipment, refuse or other matter brought onto the Road Closure Area by the Owners or their agents, contractors, or employees.

The Owners acknowledge and agree with the Town that, notwithstanding the intention of the Town to transfer the Road Closure Area to the Owners as provided in this Agreement, until such time as the Owners commence construction of the Development the Road Closure Area will be used for public access to and from the waterfront. As such the Owners agree not to exercise their rights under the license set out in this section 6.4 in a manner that will materially interfere with the public's use of the Road Closure Area for access to and from the waterfront. Prior to carrying out any work within the Road Closure Area, the Owners will, at their expense, apply for and obtain all necessary permits in order to undertake work within a highway.

- 6.5 Subject to compliance with all reasonable work and safety requirements imposed by the Owners or their contractors, and subject to all applicable WorkSafeBC requirements, the Town and its agents, contractors, and employees have a licence, exercisable on 48 hours prior written notice to the Owners, to enter upon the Road Dedication Area from time to time prior to the Completion Date, at the Town's sole risk and expense, for the purpose of making inspections, surveys, tests, and studies of the Road Dedication Area. The Town agrees to:
- (a) release and indemnify, and hold harmless, the Owners from and against any and all actions, causes of actions, liability, demands, losses, costs, and expenses (including legal fees and disbursements) which the Owners or any third party may suffer, incur, be subject to or liable for, arising out of or in any way related to or in connection with the exercise by the Town of its rights under this section; and
 - (b) leave the Road Dedication Area in the same condition as that in which the Town found the Road Dedication Area, including by removing any equipment, refuse or other matter brought onto the Road Dedication Area by the Town or its agents, contractors, or employees.

The Town acknowledges and agrees with the Owners that, notwithstanding the intention of the Owners to transfer the Road Dedication Area to the Town as provided in this Agreement, until such time as the Development is constructed, the Road Dedication Area will be located within and immediately adjacent to the construction site for the Development, which will include the construction of the parking facility or a portion thereof in the Air Space Parcel and other improvements on the Development Lands. As such the Town agrees not to exercise its rights under the license set out in this section 6.5 in a manner that will materially interfere with or delay the activities of the Owners, their employees, workers, consultants, agents and contractors in the performance the construction and development work in connection with the Development to be undertaken on the Development Lands and within the Air Space Parcel.

Further Assurances

- 6.6 The parties will execute and deliver all such further documents, deeds and instruments, and do and perform such other acts, as may be reasonably necessary to give full effect to

the intent and meaning of this Agreement.

Notice

6.7 Any notice, direction, demand, approval, certificate, or waiver (any of which constitutes a "Notice" under this section), which may be or is required to be given under this Agreement, must be in writing and be delivered or sent by email:

(a) to the Town at:

Town of Gibsons
474 South Fletcher Road
Gibsons, BC, V0N 1V0

Email Address: aboel@gibsons.ca
Attention: Andre Boel, Director of Planning

with a copy to the Town's Solicitors at:

Young, Anderson
Barristers & Solicitors
1616 – 808 Nelson Street
Vancouver, B.C. V6Z 2H2

Email Address: track@younganderson.ca
Attention: Joanna Track

(b) to the Owners at:

Email Address: _____
Attention: _____

with a copy to the Owners' Solicitors at:

Email Address: _____
Attention: _____

or to such other address or email address of which notice has been given as provided in this section. Any Notice that is delivered is to be considered given on the day it is delivered and any Notice that is sent by email is to be considered given on the day it is sent except that if, in either case, that day is not a Business Day, it is to be considered given on the next Business Day after it is sent.

No Effect on Powers

6.8 This Agreement does not, and nothing herein will:

- (a) affect or limit the discretion, rights, duties or powers of the Town or the Town's Approving Officer under the common law or any statute, bylaw or other enactment;
- (b) affect or limit the common law or any statute, bylaw or other enactment applying to the Owners or the Road Closure Area; or
- (c) relieve the Owners from complying with any common law or any statute, regulation, bylaw or other enactment.

Time of Essence

6.9 Time is of essence in this Agreement.

Interpretation

6.10 In this Agreement:

- (a) all dollar amounts referred to in this Agreement are Canadian dollars;
- (b) reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;
- (c) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;
- (d) the term "enactment" has the meaning given to it under the *Interpretation Act* (British Columbia) on the reference date of this Agreement;
- (e) reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;
- (f) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced from time to time, unless otherwise expressly provided;

- (g) reference to a particular numbered section or article, or to a particular lettered Schedule, is a reference to the correspondingly numbered or lettered article, section or Schedule of this Agreement and any Schedules to this Agreement form part of this Agreement; and
- (h) where the word "including" is followed by a list, the contents of the list are not intended to circumscribe the generality of the expression preceding the word "including".

Tender

- 6.11 Any tender of documents or money to be made upon a party may be made at that party's address set out in this Agreement or upon their solicitor.

No Other Agreements

- 6.12 This Agreement is the entire agreement between the parties regarding its subject and it terminates and supersedes all other representations, warranties, promises and agreements regarding its subject.

Assignment

- 6.13 The Owners may not assign all or any part of this Agreement, or the benefit hereof, without the prior written consent of the Town, which may be withheld in the Town's sole discretion. Notwithstanding the foregoing, in the event that the Fuernisses transfer title to the Fuerniss Lands to GG Development prior to the Completion Date, the Fuernisses may assign their interest in this Agreement to GG Development without the prior written consent of the Town.

No Real Estate Agent

- 6.14 Each party represents and warrants to the other that no real estate agent or other agent has assisted the party giving the representation and warranty, or in any way directly or indirectly participated, in the making of this Agreement and that no real estate agent or other agent is entitled to any commission or other remuneration in any way in connection with this Agreement or the sale and purchase of the Road Closure Area, the Road Dedication Area, or the Air Space Parcel pursuant to this Agreement.

Benefit

- 6.15 This Agreement enures to the benefit of and is binding upon the parties and their respective heirs, executors, administrators, successors and assigns.

Schedules

- 6.16 The following are Schedules to this Agreement and form an integral part of this Agreement: Schedule "A" – Sketch; Schedule "B" – Winn Road SRW; Schedule "C" – Air

Space Agreement; Schedule "D" – Waterfront SRW/Covenant; and Schedule "E" – Waterworks SRW.

Modification

6.17 This Agreement may not be modified except by an instrument signed in writing by the parties, except that the Completion Date may be changed by their agreement through their respective solicitors upon instructions to their solicitors as evidenced promptly thereafter in writing by their solicitors.

Governing Law

6.18 This Agreement will be governed by and construed in accordance with the laws of British Columbia.

Non-Merger

6.19 None of the provisions of this Agreement will merge in the transfer of the Road Closure Area or the dedication or transfer of the Road Dedication Area, or any other documents delivered on the Completion Date, and the provisions of this Agreement will survive the completion of the land exchange transaction under this Agreement.

Counterparts

6.20 This Agreement may be executed in several counterparts, each of which will be deemed to be an original and all of which will together constitute one and the same instrument. The execution of this Agreement will not become effective until all counterparts have been executed by all the parties to this Agreement. A copy of this Agreement delivered by facsimile or other electronic means and bearing a copy of the signature of a party to this Agreement shall for all purposes be treated and accepted as an original copy thereof.

As evidence of their agreement to the terms and conditions contained in this Agreement, and as evidence of their agreement to be bound contractually by those terms and conditions, the parties have executed and delivered this Agreement on the dates set out below.

THE GEORGE GIBSONS DEVELOPMENT LTD. by its authorized signatory(ies):

Name:

Name:

Date:

Signed, Sealed and Delivered in the presence of:)

Name)

Address)

Occupation)

Date: _____)

KLAUS FUERNISS

Signed, Sealed and Delivered in the presence of:)

Name)

Address)

Occupation)

Date: _____)

MONIKA FUERNISS

TOWN OF GIBSONS, by its authorized signatories:

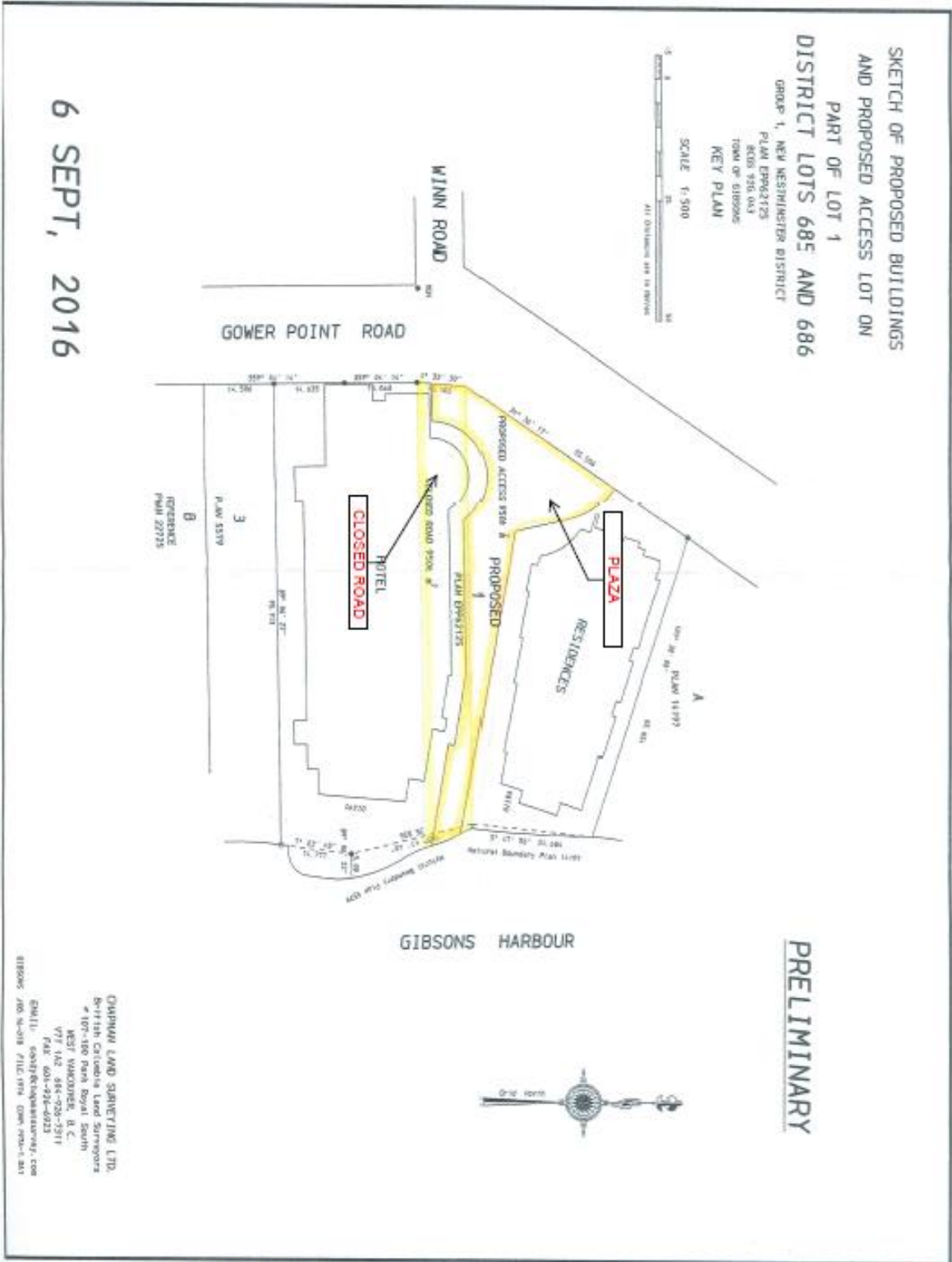
Mayor: Wayne Rowe

Corporate Officer: Selina Williams

Date:

SCHEDULE "A" TO LAND EXCHANGE AGREEMENT

SKETCH



SCHEDULE "B" TO LAND EXCHANGE AGREEMENT

WINN ROAD SRW

[next page]

TERMS OF INSTRUMENT – PART 2**STATUTORY RIGHT OF WAY (WINN ROAD)**

This Agreement dated for reference the ____ day of _____, 201__ is

BETWEEN:

TOWN OF GIBSONS, PO Box 340, Gibsons, British Columbia, V0N 1V0

(the “Grantor”)

AND:

TOWN OF GIBSONS, PO Box 340, Gibsons, British Columbia, V0N 1V0

(the “Town”)

GIVEN THAT:

- A. The Grantor is the owner of those lands and premises located in Gibsons, British Columbia, legally described as NO PID, _____ (the “Land”);
- B. Section 218 of the *Land Title Act*, R.S.B.C., c. 250 enables the Grantor to grant in favour of the Town an easement without a dominant tenement to be known as a statutory right of way;
- C. The Grantor has agreed to grant to the Town a statutory right of way for the construction, operation, maintenance, alteration, removal, repair, replacement and use of certain works, including all appurtenances ancillary and incidental thereto, all generally described as follows:
 - (a) all roadworks including but not limited to curbs and gutters, street paving, sidewalks, boulevards, with gravel, concrete, asphalt, bark-mulch, stone, brick or other all-weather impervious surface of any kind, landscaping, lighting, traffic and railway signals, retaining walls, bridges and their structural components, railings, benches, signs, waste receptacles and other facilities and appurtenances necessary or convenient for the passage of the public and use of the area as public highway (the “Works”),

until such time as the Grantor has completed construction of its approved development in accordance with the Development Agreement dated for reference October 1, 2015, registered in the Land Title Office under number CA4741913 (the “Development”);

- D. The statutory right of way granted by this agreement is necessary for the operation and maintenance of the Town’s undertaking.

THIS AGREEMENT is evidence that, pursuant to s. 218 of the *Land Title Act*, and in consideration of \$1.00 paid by the Town to the Grantor and other good and valuable consideration (the receipt and sufficiency of which the Grantor acknowledges), the Grantor covenants and agrees with the Town as follows:

1. **Grant of Statutory Right of Way** – The Grantor hereby grants, conveys and confirms to the Town in perpetuity the full, free and uninterrupted right, liberty, easement and statutory right of way for the Town, its officers, employees, contractors, licensees, agents and others of the Town, in common with the Grantor, at all times hereafter from time to time at their will and pleasure to enter, go, be on, pass and repass, with or without vehicles, personal property and equipment, upon, over, under and across the Land to:
 - (a) construct, install, remove, replace, repair, alter, maintain, clean, inspect, operate and use the Works as a public road open to the public from time to time in the Town’s discretion and to permit the public to use the Works on the Land as though it was a dedicated highway;
 - (b) have unobstructed access to and from the Land at any and all times from adjacent public streets;
 - (c) make surveys and tests and establish grades and levels;
 - (d) excavate or otherwise alter the contours of the Land and to backfill trenches;
 - (e) landscape the Land as a public way, including tree trimming and reforestation;
 - (f) store personal property (including equipment) necessary to exercise its rights under this agreement, provided that the Town will consult the Grantor as to the duration and location of such storage;
 - (g) remove from the Land such structures, improvements, fixtures, fences and driveways, trees, shrubs, plants, vehicles, storage facilities and other obstructions whatsoever as, in the Town’s opinion, acting reasonably, is necessary in order to repair, alter, operate, maintain, clean, inspect or replace the Works provided the Town repairs any damage to the Land including the repaving of any previously paved areas and provided that the Town gives the Grantor 14 days prior written notice of its intention to do so; and
 - (h) do all other things on the Land as may be incidental to, or reasonably necessary in connection with, the foregoing.

2. **Grantor’s Obligations** – Other than during the period of suspension set out in section 5 below, the Grantor will:
 - (a) not do or permit to be done anything which in the opinion of the Town may interfere with, injure or impair the operating efficiency of, or obstruct access to or

the use of, the Land, the Works or the rights granted to the Town under this agreement;

- (b) not deposit or place garbage, debris, junk or other material on the Land;
- (c) not place, install or construct any building, structure, mobile home or other improvement (including any paving, walls or fences) on the Land without the Town's approval;
- (d) not carry on blasting on or adjacent to the Land without the Town's approval; and
- (e) not diminish or increase the soil cover over any Works installed on the Land without the Town's approval.

3. **Additional Town Rights** – The Town:

- (a) is entitled to peaceably hold and enjoy the rights, liberties and statutory right of way hereby granted without hindrance, molestation or interruption by the Grantor or any person, firm or corporation claiming by, through, under or in trust for the Grantor;
- (b) in its sole discretion may at any time remove any or all of the Works installed by the Town over, upon or under the Land;
- (c) may remove anything placed on the Land by the Grantor; and
- (d) notwithstanding section 3(b), if the Town releases or discharges this agreement in whole or in part, the Town will not be responsible or obligated in any way to remove or pay for the cost of removal of any Works from the Land.

4. **Town's Obligations** – The Town must:

- (a) do all things hereby authorized to be done by it over, through, under, and upon the Land in a good and workmanlike manner so as to cause no unnecessary damage or disturbance to the Grantor, the Land, or to any improvements thereon;
- (b) not bury, without the prior written consent of the Grantor, construction debris or rubbish in excavations or backfill.

5. **Suspension of Statutory Right of Way** – Upon the Grantor commencing soil improvements and site remediation on the Land, the Town's rights under this Agreement shall be suspended and the Town shall cease its use of the Land for the purposes described herein. For the purposes of this Agreement, soil improvements and site remediation will be considered to have "commenced" once development permits have been issued by the Town of Gibsons for Development Permit Areas No. 1, No. 2 and No. 9, as required by Town of Gibsons Official Community Plan Bylaw No. 985, 2005 in

connection with the Development, and the Grantor has physically commenced soil-related work on the site such that unencumbered access to the Land is required in order to complete such work. In the event that the Grantor has not completed construction of the Development on or before December 31, 2022, the Town may recommence its use of the Land and Works for the purposes provided herein and the Town's rights shall continue intact, including its right to remove anything placed on the Land by the Grantor as set out in section 3(c) hereof. For the purposes of this Agreement, construction will be considered "complete" once an occupancy permit or permits have been issued by the Town of Gibsons for the Development.

6. **Termination and Discharge of Statutory Right of Way** – Upon completed construction of the Development on the Land, as defined in section 5 above, the Grantor may submit a discharge of this Agreement to the Town and the Town shall, within a reasonable time after request by the Grantor, execute and deliver to the Grantor such discharge of this Agreement. Upon deposit of the discharge in the Land Title Office, this Agreement shall be at an end and the Town shall have no further rights to cross over the Land or make use of the Works located thereon.
7. **No Waiver** – No waiver by the Town of default by the Grantor is effective unless expressed in writing by the party waiving default, and no condoning, overlooking or excusing by a party of a previous default of the other will operate as a waiver of any subsequent continuing default.
8. **Notice** – Any notice required or permitted to be given pursuant to this agreement must be in writing and delivered personally or sent by prepaid express mail to the addresses set out above. If notice is delivered personally, it will be considered given when it is delivered. If notice is mailed, it will be considered given 5 days after mailing by deposit at a Canada Post mailing point or office. A party may only change its address for delivery under this section by giving notice to the other party in accordance with this section. Notwithstanding the foregoing, the Town may provide notice to the Grantor at the address indicated on title to the Land in the land title office from time to time.
9. **Severance** – If any portion of this agreement is for any reason held to be invalid by the decision of a court of competent jurisdiction, the invalid portion is to be severed and the decision that it is invalid does not affect the validity of the remainder of this agreement.
10. **Entire Agreement** – This agreement is the entire agreement between the parties and neither the Town nor the Grantor has given or made any representations, warranties, guarantees, promises, covenants or agreements to the other except those expressed in this agreement, and this agreement may only be amended by written agreements by the parties.
11. **Interpretation** – In this agreement:
 - (a) reference to the singular includes a reference to the plural, and vice versa, unless

the context requires otherwise;

- (b) time is of the essence; and
- (c) where the word “including” is followed by a list, the contents of the list are not intended to circumscribe the generality of the expression preceding the word “including”.

12. **Interest In Land and Enurement** – This agreement burdens and runs with, and binds the successors in title to, the Land and each and every part into which the Land may be subdivided (including by deposit of a strata plan of any kind) and any land with which the Land may be consolidated. This agreement enures to the benefit of and is binding on the parties and their respective heirs, executors, successors and assignees, as the case may be.

As evidence of their agreement to be bound by this agreement, the parties have executed Part 1 of the *Land Title Act* Form C to which this agreement is attached and which forms part of this agreement.

SCHEDULE "C" TO LAND EXCHANGE AGREEMENT

AIR SPACE AGREEMENT

[next page]

TERMS OF INSTRUMENT – PART 2

AIR SPACE SUBDIVISION – EASEMENTS AND SECTION 219 COVENANTS

THIS AGREEMENT dated for reference _____, 201__ is

AMONG:

TOWN OF GIBSONS, PO Box 340, Gibsons, British Columbia, V0N 1V0
(the “ASP Owner”)

AND:

TOWN OF GIBSONS, PO Box 340, Gibsons, British Columbia, V0N 1V0
(the “Remainder Owner”)

AND:

TOWN OF GIBSONS, PO Box 340, Gibsons, British Columbia, V0N 1V0
(the “Town”)

WHEREAS:

- A. The ASP Owner is the registered owner in fee simple of the Air Space Parcel;
- B. The Remainder Owner is the registered owner in fee simple of the Remainder Parcel;
- C. The ASP Owner and the Remainder Owner wish to enter into this Agreement to provide for certain rights, licenses and easements in respect of the Parcels in order to provide support, access, utilities and certain other benefits appurtenant to each of the Parcels; and
- D. The approving officer for the Town approved the application for the air space subdivision to create the Air Space Parcel subject to the condition that the ASP Owner and the Remainder Owner enter into this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the matters referred to in the foregoing recitals, the covenants and mutual agreements herein contained and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged and agreed to by the parties), the parties, for themselves and their successors, hereby acknowledge, agree, covenant, declare and grant as follows:

ARTICLE 1 DEFINITIONS

1.1 Definitions –

In addition to those terms defined elsewhere in this Agreement, in this Agreement:

- (a) “Air Space Parcel” means the parcel situate in the Town of Gibsons, British Columbia and legally described as NO PID, Air Space Parcel _____, Air Space Plan EPP _____.
- (b) “ASP Owner” means the registered owner in fee simple of the Air Space Parcel.
- (c) “Construct” means to alter, construct, demolish, install, place, reconstruct, replace, remove and renew and "Constructing", "Construction", and "Constructed" have corresponding meanings.
- (d) “Development” means, together, the Parkade located within the Air Space Parcel and the Public Plaza located within the Remainder Parcel, and means, in relation to each Parcel, the applicable portion of the foregoing development located within each Parcel.
- (e) “Other Owner” means in respect of an Owner, the other Owner.
- (f) “Other Owner's Easements” means the easements and rights granted by an Owner to the Other Owner pursuant to Sections 2.0 or 3.0, as the case may be.
- (g) “Other Parcel” means in respect of a Parcel, the other Parcel.
- (h) “Owner” means individually the ASP Owner or the Remainder Owner, as the case may be, and “Owners” means both of them.
- (i) “Parcel” means individually the Air Space Parcel or the Remainder Parcel and "Parcels" means both of them.
- (j) “Parkade” means the multi-level underground parking facility located within the Air Space Parcel, which structure is attached to and used in connection with the residential tower and hotel building constructed on those parcels of land legally described as _____, and all ancillary works and facilities in connection therewith, and all subsequent alterations, additions and replacements thereof, as the case may be.
- (k) “Public Plaza” means the paved public plaza located within the Remainder Parcel, running from Gower Point Road to the waterfront, and all ancillary works and facilities in connection therewith, and all subsequent alterations, additions and replacements thereof, as the case may be.
- (l) “Remainder Parcel” means the fee simple parcel situate in the Town of Gibsons, British Columbia and legally described as PID: _____, _____ Except Part in Air Space Plan EPP _____.

- (m) “Support Structures” means the soil and any and all structural elements from time to time on or within a Parcel which are required to support a Development that is situate within the Other Parcel, including, without limitation, anchors, foundations, columns, footings, supporting walls, floors and ceilings, beams, bents, brackets, bracings and grade or tie beams.
- (n) “Utility Systems” means any and all machinery, equipment, pipes, lines, conduits, wires, cables, chutes, ducts, vents, stacks, shafts, pumps, display and control panels, light fixtures, heating, air conditioning and ventilating equipment and other devices and systems (including all ancillary appliances and equipment and, without limitation, emergency generators), including, without limitation, gas, electricity, water, steam, sanitary sewer, storm sewer and drainage systems, air intake, air exhaust, ventilation, fire and emergency alarms, sprinklers and telephone, radio, television, cablevision, computer and other communication signals in any form whatsoever.

ARTICLE 2 EASEMENTS OVER REMAINDER PARCEL (PUBLIC PLAZA)

2.1 Grant of Easements over Remainder Parcel (Public Plaza)

The Remainder Owner hereby grants, in perpetuity to the ASP Owner, for the benefit of and appurtenant to the Air Space Parcel, the following non-exclusive, full, free and uninterrupted right, liberty, right-of-way and easement on, over, within and through the Remainder Parcel, in common with the Remainder Owner and all other persons now or hereafter having the express or implied permission of the Remainder Owner or having a similar right, subject to the terms, conditions and limitations stated herein:

- (a) Utility Systems – To use and inspect any and all Utility Systems from time to time situate within the Remainder Parcel which serve (exclusively or otherwise) the Air Space Parcel and, at reasonable times and upon 3 days’ notice (except in the case of emergency when no notice will be required), to enter, go, pass and repass, with or without supplies, equipment and machinery, within, over and upon those parts of the Remainder Parcel as the ASP Owner may reasonably require for the purpose of the foregoing.
- (b) Support – For support for the Development situate within the Air Space Parcel by any Support Structures on or within the Remainder Parcel.
- (c) Construction and Repair – To enter, go, pass and repass within, over and upon those parts of the Remainder Parcel as the ASP Owner may reasonably require, at reasonable times and upon reasonable notice to the Remainder Owner (except in the case of emergency when no notice will be required), with or without supplies, equipment, machinery and, with respect to parts thereof constructed for the purpose of vehicles, with or without vehicles, for the purpose of:
 - (i) inspecting, repairing, cleaning, maintaining and Constructing the Development or any part thereof situate within the Air Space Parcel,

- (ii) performing any of its obligations under Section 7.0.
- (d) Generally – To do all acts, things and matters necessary for or incidental to the exercise of the rights granted in this Section 2.1.

2.2 **Benefit and Burden**

Each of the easements granted in Section 2.1 shall be appurtenant to and for the benefit of the Air Space Parcel and shall charge and be a burden upon the Remainder Parcel.

ARTICLE 3 EASEMENTS OVER AIR SPACE PARCEL (PARKADE)

3.1 **Grant of Easements over Air Space Parcel (Parkade)**

The ASP Owner hereby grants, in perpetuity to the Remainder Owner, for the benefit of and appurtenant to the Remainder Parcel, the following non-exclusive, full, free and uninterrupted right, liberty, right-of-way and easement on, over, within and through the Air Space Parcel, in common with the ASP Owner and all other persons now or hereafter having the express or implied permission of the ASP Owner or having a similar right, subject to the terms, conditions and limitations stated herein:

- (a) Utility Systems – To use and inspect any and all Utility Systems from time to time situate within the Air Space Parcel which serve (exclusively or otherwise) the Remainder Parcel and, at reasonable times and upon 3 days' notice (except in the case of emergency when no notice will be required), to enter, go, pass and repass, with or without supplies, equipment and machinery, within, over and upon those parts of the Air Space Parcel as the Remainder Owner may reasonably require for the purpose of the foregoing.
- (b) Support – For support for the Development situate within the Remainder Parcel by any Support Structures on or within the Air Space Parcel.
- (c) Construction and Repair – To enter, go, pass and repass within, over and upon those parts of the Air Space Parcel as the Remainder Owner may reasonably require, at reasonable times and upon reasonable notice to the ASP Owner (except in the case of emergency when no notice will be required), with or without supplies, equipment, machinery and, with respect to parts thereof constructed for the purpose of vehicles, with or without vehicles, for the purpose of:
 - (i) inspecting, repairing, cleaning, maintaining and Constructing the Development or any part thereof situate within the Remainder Parcel, and
 - (ii) exercising its rights under Section 7.4 in relation to the matters that are the subject the Remainder Owner's easements under this Section 3.0.
- (d) Generally – To do all acts, things and matters necessary for or incidental to the exercise of the rights granted in this Section 3.1.

3.2 Benefit and Burden

Each of the easements granted in Section 3.1 shall be appurtenant to and for the benefit of the Remainder Parcel and shall charge and be a burden upon the Air Space Parcel.

ARTICLE 4 RESERVATIONS

4.1 Reservations

Notwithstanding the easements and covenants granted in Sections 2.0 and 3.0, there is hereby reserved to each Owner in respect of such Owner's Parcel, subject to the restrictions and limitations hereinafter set forth, the right at all times hereafter and from time to time:

- (a) Temporary Interruptions – To temporarily interrupt the use and enjoyment by the Other Owner of the easements and rights over the Owner's Parcel or a portion thereof for the purposes of:
- (i) Constructing, repairing or maintaining Utility Systems in, upon, over, under or through that Parcel as the Owner may reasonably require or may deem expedient; or
 - (ii) subject to Section 5.1(b), Constructing or repairing the Development or any part thereof situate within the Owner's Parcel as the Owner of such Parcel may require or may deem expedient,

in any manner that does not interfere with support provided by the Owner's Parcel to the Other Parcel pursuant to the easements granted herein, provided that any such interruption shall be as short as reasonably possible, reasonable notice of the intended interruption shall be provided (except in the case of emergency when no advance notice shall be required but notice shall be provided as soon as reasonably possible) and all reasonable steps shall be taken by the Owner during the period of the interruption to, if reasonably possible, provide the Other Owner with adequate alternative access, utility services and other easement benefits so interrupted.

ARTICLE 5 COVENANTS

5.1 Owners Covenants

Each Owner hereby covenants and agrees with the Other Owner that such Owner shall:

- (a) Minimize interference with the Other Parcel – In exercising the easement rights granted to an Owner herein, use all reasonable efforts to cause as little interference as possible with the use and enjoyment of the Other Parcel.
- (b) Minimize Nuisance to Other Parcel – Use all reasonable efforts to minimize the nuisance and inconvenience to occupants of the Other Parcel arising out of the exercise of any of

the easement rights granted to the Owner herein.

- (c) Not interfere with an Other Owner's Easement Rights – Subject to Section 4.1, not do or permit any person claiming through or under the Owner to obstruct or interfere with the Other Owner's easement rights hereunder and shall keep the portions of a Parcel which are the subject of the Other Owner's easement rights clean and clear of all debris or other obstructions, provided that nothing contained in this Agreement will be interpreted so as to restrict or prevent such Owner from using that Owner's Parcel and the Development therein in any manner which does not unreasonably interfere with the exercise by the Other Owner of its easement rights hereunder.
- (d) Repair – Subject to any other agreements between the parties regarding maintenance and repair, promptly and properly repair all damage to the Other Parcel and the Development therein and thereon that is caused by such Owner, or any of its employees, servants, agents, contractors, licensees and invitees, in the exercise of any of the Owner's easement rights, so as to restore the Other Parcel and the Development therein and thereon to substantially the same condition as existing immediately prior to the occurrence of such damage.
- (e) Discharge Liens – Promptly cause to be discharged from title to the Other Parcel any lien, charge or encumbrance that may be registered against title to the Other Parcel arising out of the exercise of the Owner's easement rights hereunder.
- (f) Continuing Support – Not do or omit to do anything at any time in or upon a Parcel which shall in any manner interfere with the support of the Development within the Other Parcel and shall not remove any Support Structures without providing or ensuring sufficient or equivalent alternate support for such Development.
- (g) Sale of Parcel – Except for the sale of strata lots created by the deposit of a Strata Plan in respect of a Parcel if the resulting strata corporation has entered into the assumption agreements contemplated under section 10.3(b), not sell or transfer, directly or indirectly, any legal or beneficial interest in the Owner's Parcel unless, as a condition thereof and prior thereto, the Owner causes the purchaser or transferee to enter into an assumption agreement pursuant to which the purchaser or transferee agrees to assume, be bound by and observe all of the obligations, positive or negative, of the Owner hereunder from and after the effective date of the sale or transfer to the same extent as if that purchaser or transferee had been an original party to this Agreement. If an Owner fails to comply with this Section 5.1(g), that Owner will remain liable for the performance of the obligations hereunder notwithstanding the transfer of that Owner's Parcel.
- (h) Compliance with Applicable Legislation – Comply with all applicable laws, regulations and bylaws of governmental authorities applicable to the Development within its Parcel, with respect to the operation, repair, maintenance and upkeep of its Parcel and the Development thereon and therein and with respect to the exercise of its easement rights hereunder within or on the Other Parcel and not to carry out the construction of any

improvements or repair to the Development within its Parcel, or on or within the Other Parcel in the exercise of its easement rights hereunder, except in compliance with such laws, regulations and bylaws.

5.2 Insurance by Owners

Each Owner (for the purposes of this Section 5.2, the “Insuring Owner”) hereby covenants and agrees with the Other Owner that it shall insure and perform the following covenants in respect of the Development on its Parcel (for the purpose of this Section 5.2, collectively called the “Insured Property”), and in exercising any easement rights hereunder to construct any improvements within or on the Other Owner’s Parcel, in all cases for itself and for the benefit of the Other Owner:

- (a) subject to Section 5.3, the Insuring Owner shall, at its sole cost and expense, and in addition to and not in substitution for any policies of insurance maintained by the Other Owner, take out and keep in full force and effect, or cause to be maintained, policies of:
 - (i) insurance against fire and other risks of physical loss or damage, including earthquake and flood (if such insurance can be obtained on commercially reasonable terms and conditions), leakage from fire protection equipment, and insurance against all other hazards covered by policies normally in use from time to time by prudent owners of properties similar to the Insured Property in an amount equal to the full replacement cost thereof;
 - (ii) comprehensive public liability insurance, including all risks normally insured by prudent occupants in connection with the use and occupancy of properties similar to the Insured Property, in respect of the use and occupancy of the Insured Property, for claims for personal injury, death or property damage arising out of any one occurrence in an amount of at least \$5,000,000 (which minimum amount shall increase every five years in the same proportion to the increase over the same five year period, if any, in the All Items Consumer Price Index for Greater Vancouver published by Statistic Canada or successor in function);
 - (iii) if equipment or apparatus normally the subject of boiler and pressure vessel insurance is located on the Insured Property, boiler and pressure vessel insurance in such amount as is normally effected having regard to the nature of such equipment or apparatus;
- (b) during the Construction of any Development on the Insured Property, and during the construction of any improvements on or within the Other Owner’s Parcel in the exercise of any easement rights hereunder, the Insuring Owner shall obtain and maintain:
 - (i) course of construction insurance in such amount as would normally be carried by a prudent owner of properties being developed in a similar manner as the Insured Property, with the Other Owner and its mortgagees as named insureds to the

extent reasonably possible;

- (ii) wrap up liability insurance in such amount as would normally be carried by a prudent owner of properties similar to the Insured Property for the period of construction plus 24 months, with the Other Owner and its mortgagees as named insureds to the extent reasonably possible; and
- (c) all insurance policies shall state that they cannot be cancelled without the insurer providing the other Insuring Owner with 30 clear days written notice stating when such cancellation is to be effective;
- (d) the Insuring Owner shall from time to time, whenever reasonably required by the Other Owner, furnish to the Other Owner certificates of insurance, certificates of renewal and other documents appropriate to evidence the insurance from time to time in force as required by this Section 5.2. If the Insuring Owner fails to insure as required under this Section 5.2, the Other Owner, after written notice to the Insuring Owner, may, but shall not be obliged to, effect such insurance in the name and at the expense of the Insuring Owner, and the Insuring Owner shall promptly repay the Other Owner for all costs incurred by the Other Owner in so doing.

5.3 **Joint Insurance**

Notwithstanding Section 5.2(a) and subject to Section 5.2(c), the Owners may or, if separate insurance policies are not available, shall take out, keep, maintain and participate in a joint insurance policy to cover the matters described in Section 5.2(a), if mutually agreed by the Owners. In such event, the Owners shall cooperate with each other to the fullest extent to obtain and maintain such joint insurance policy.

5.4 **Default**

If an Owner (in this Section 5.4, the "Defaulting Party") fails to perform any of its obligations or covenants under this Agreement, the Other Owner may, at its discretion, perform any of the Defaulting Party's obligations or covenants and the Defaulting Party shall, on demand, reimburse the Other Owner on a complete indemnity basis for all reasonable costs and expenses of doing so.

5.5 **ASP Owner Indemnity**

The ASP Owner will indemnify and save harmless the Remainder Owner, as owner of the Remainder Parcel, from and against any and all actions, causes of action, claims, damages, demands, judgments, losses, suits, proceedings, costs and expenses of any kind whatsoever (including legal fees and disbursements) for any loss, damage, injury or death to any person or persons or any property arising out of or in any way related to the use by the ASP Owner or those for whom it is in law responsible of the easements granted to the ASP Owner under this Agreement or any failure by the ASP Owner to fulfill any of its obligations under this Agreement,

save and except to the extent that such loss, damage, injury or death is caused by or contributed to by the negligence or willful act or omission of the Remainder Owner or those for whom it is in law responsible.

5.6 Remainder Owner Indemnity

The Remainder Owner will indemnify and save harmless the ASP Owner, as owner of the Air Space Parcel, from and against any and all actions, causes of action, claims, damages, demands, judgments, losses, suits, proceedings, costs and expenses of any kind whatsoever (including legal fees and disbursements) for any loss, damage, injury or death to any person or persons or any property arising out of or in any way related to the use by the Remainder Owner or those for whom it is in law responsible of the easements granted to the Remainder Owner under this Agreement or any failure by the Remainder Owner to fulfill any of its obligations under this Agreement, save and except to the extent that such loss, damage, injury or death is caused by or contributed to by the negligence or willful act or omission of the ASP Owner or those for whom it is in law responsible.

ARTICLE 6 MODIFICATIONS OF EASEMENTS

6.1 Replacement Easements

As an integral part of the granting of easements contained in Section 2.0 and 3.0 hereof, subject always to Section 9.1(e), subsequent to or in contemplation of damage to, demolition or destruction of or renovations to the Development which is situate on or within a Parcel, each Owner shall, if so requested by the Other Owner in writing, duly execute in registrable form and deliver to the Other Owner such modifications to this Agreement in a form and on such terms and conditions as the Other Owner and such Owner shall agree. There shall be no compensation or valuable consideration payable to the Owner by the Other Owner therefor, it is the intent of the parties hereto that any modifications to this Agreement shall be at least equal in utility, security, value and convenience to each of the Owners as the respective easements and licenses granted hereunder and, provided that such modifications to this Agreement are so equal, it is also intended that the modifications to this Agreement interfere as little as possible with the use and enjoyment of each Parcel.

6.2 Priority

Any modifications or replacements of this Agreement will be registered in the Land Title Office and the party granting such modification or replacement easements will use its best efforts to cause same to be registered with priority over any charges and encumbrances which permit the exercise of any rights or remedies that might prejudice the rights granted to the holder of the easements granted in the modification or replacement agreement.

ARTICLE 7 REPAIR AND MAINTENANCE

7.1 Definitions

In addition to those terms defined elsewhere in this Agreement, in this Section 7.0:

- (a) "Common Areas and Facilities" means:
- (i) within or on the Remainder Parcel:
 - (A) any Utility Systems located within the Remainder Parcel that are the subject of any of the easements granted hereunder; and
 - (B) any other areas, facilities, systems and equipment located within the Remainder Parcel that are the subject of any of the easements granted hereunder;
 - (ii) within the Air Space Parcel:
 - (A) any Utility Systems located within the Air Space Parcel that are the subject of any of the easements hereunder; and
 - (B) any other areas, facilities, systems and equipment located within the Air Space Parcel that are the subject of any of the easements granted hereunder.
- (b) "Major Damage" occurs when:
- (i) a Development within a Parcel is damaged or destroyed to the extent of at least thirty-five percent (35%) of the full replacement cost thereof; or
 - (ii) a Development within a Parcel is condemned; or
 - (iii) the insurers for any of the Parcels, pursuant to policies of insurance maintained in accordance with this Agreement, elect to treat such Development as a total loss, provided that the determination of the extent of damage or destruction in paragraph (i) and (ii) above shall be made by a professional engineer chosen by the Owner whose Development has suffered damage or destruction.
- (c) "Costs" means the costs and expenses to operate, maintain, repair and replace and insure the Common Areas and Facilities and "Cost" means any of such costs.

7.2 ASP Owner to Pay All Costs

The ASP Owner covenants and agrees to pay all Costs and the ASP Owner further covenants and agrees with the Remainder Owner to include such estimated Costs in any annual budget of any

strata corporation created by the subdivision of the Air Space Parcel by the deposit of a strata plan pursuant to the *Strata Property Act* (British Columbia).

7.3 **Obligations to Repair, Maintain, and Rebuild**

- (a) Common Areas and Facilities – The ASP Owner shall, at its sole cost and expense, at all times operate, maintain, repair and replace each of the Common Areas and Facilities as a prudent owner would do, for the common use and benefit of the Owners.
- (b) Support Structures – The ASP Owner will be responsible, at its sole cost and expense, for operating, maintaining and repairing all Support Structures that are located within each Parcel as a careful owner would do at the ASP Owner’s sole cost and expense.
- (c) Obligation to Rebuild and Repair if not Major Damage – In the event that any Development or any part thereof shall at any time be defective or be destroyed or damaged (the “Damaged Improvements”) such that any of the Other Owner's Easements is diminished in a material way or is likely to be diminished in a material way, but the Damaged Improvements have not suffered Major Damage, the ASP Owner shall, at its sole expense and within a reasonable period of time following such damage or destruction, rebuild, repair and make the Damaged Improvements fit for the purpose of such easements.
- (d) Obligation to Rebuild and Repair if Major Damage – In the event that Damaged Improvements within a Parcel are destroyed or damaged to such extent that Major Damage has occurred such that the easements granted to the Other Owner are diminished in a material way or are likely to be diminished in a material way, then the ASP Owner shall, at its expense and within a reasonable period of time following the occurrence of such Major Damage, rebuild, repair and make the Damaged Improvements fit for the purpose of the easements under this Agreement, provided that the ASP Owner shall not have any obligation to rebuild, repair or make the Damaged Improvements fit for such easements if the ASP Owner gives notice in writing to the Remainder Owner of the ASP Owner’s intention not to rebuild, repair or make the Damaged Improvements fit for such easements within 180 days after the date of determination that Major Damage has occurred.

7.4 **Failure to Maintain, Repair, and Rebuild**

If the ASP Owner fails to fulfill its obligations under Sections 7.3, the Remainder Owner, upon giving the ASP Owner not less than seven days’ notice in writing (except in the case of emergency when no notice shall be required), shall have the right to perform same and shall be entitled to be reimbursed in full for all costs incurred by the Remainder Owner in connection with such performance.

7.5 Payment of Utility Costs

The ASP Owner shall pay all operating costs for Common Areas and Facilities, including utility consumption (including, without limitation, electrical, water and gas).

ARTICLE 8 DISPUTE RESOLUTION AND DAMAGE LIMITATION

8.1 Dispute Resolution

In the event of any dispute or disagreement in respect of any matter that is the subject of this Agreement or the interpretation of any provision of this Agreement including, without limitation, any dispute with respect to any cost sharing provision, the parties agree that such dispute or disagreement shall be submitted to and finally settled by a single arbitrator pursuant to the *Arbitration Act* of British Columbia as same may be amended from time to time or any legislation substituted therefor, provided that it is understood and agreed that this Section 8.1 is not intended to nor is it to be construed as preventing the parties hereto, or either of them, from seeking injunctive relief. If the Owners cannot agree to a single arbitrator, then such arbitrator shall be chosen by reference to a Judge of the Supreme Court of British Columbia. Such arbitration shall include a requirement for the production and discovery of documents as required by the British Columbia Supreme Court Rules. The Owners will share equally in the fees and disbursements payable to the arbitrator (but, for clarity, shall pay their own respective costs, including legal costs, associated with the arbitration and any Court application made pursuant to this section).

8.2 No Liability for Consequential Damages

Under no circumstances shall an Owner be liable to the Other Owner or a third party for indirect or consequential damages by reason of breach of any covenant herein contained.

ARTICLE 9 SECTION 219 COVENANTS

9.1 Section 219 Covenant

Pursuant to Section 219 of the *Land Title Act* (British Columbia), it being the intention and agreement of each Owner that the provisions of this Section 9.1 shall be annexed to and run with and be a charge on each of the Parcels, each Owner covenants and agrees with the Town that the Owner's Parcel shall not be used for any purpose if any of the easements in Sections 2.0 or 3.0 benefitting the Owner's Parcel is discharged from title to the Owner's Parcel in the land title office or modified in either case without the prior written consent of the Town and each Owner further agrees as follows:

- (a) No Termination – Under no circumstances whatsoever shall the easements in Section 2.0 or 3.0 be interrupted or terminated by reason of any breach, default, trespass or other wrong, whether by commission or omission, on the part of any of the Other Owner or those claiming by, through or under the Other Owner or for any reason whatsoever, and each Owner shall refrain from seeking any judgment, order or declaration to that effect.

Nothing contained herein shall prevent an Owner from applying to enjoin or restrain any wrongful action or from seeking damages therefor.

- (b) No Further Subdivision – The Owners shall not further subdivide any of the Parcels except pursuant to the *Strata Property Act* (British Columbia).
- (c) No Strata Subdivision – The Owners shall not subdivide any of the Parcels pursuant to the *Strata Property Act* (British Columbia) unless the Owner of the Parcel being subdivided has complied in all respects with Section 10.3 of this Agreement.
- (d) No Liability of Town – The Town shall not be liable, as covenantee under this Section 9.0, for anything done or failed to be done pursuant to or associated with this Agreement or this Section 9.0 or anything contemplated thereby.
- (e) No Modification or Release – The Owners covenant each with the other and with the Town that the easements and rights granted pursuant to the provisions of this Agreement shall not be modified, abandoned, surrendered, released or discharged without the prior written consent of the Town.
- (f) Indemnity of Town – Each Owner shall, and hereby does, release and agree to indemnify and save harmless the Town, its officials, officers, employees and agents, including, the Town’s approving officer and building officials, from and against all manner of actions, causes of action, claims, demands, suits, losses, expenses, judgments, costs (including legal fees and disbursements) arising out of or in any way related to:
 - (i) any release of this Agreement or the loss of any of the rights granted hereunder;
 - (ii) the approval by the Town or the Town’s approving officer of the subdivision creating the Air Space Parcel and the Remainder Parcel as separate parcels.

ARTICLE 10 GENERAL

10.1 Severability

If any term of this Agreement is held to be invalid, illegal or unenforceable by a court having the jurisdiction to do so, that term is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force un-amended by that holding or by the severance of that term.

10.2 Acknowledgement

Each Owner hereby acknowledges, agrees and declares that the provisions of Section 9.0 are for the sole purpose of benefiting the Town and, in particular, acknowledge, agree and declare that the provisions of any of Sections 2.0 or 3.0 are not designed to protect or promote the interests of the Owners or any owner, occupier or user from time to time of any Parcel, and the Town may at its option execute an amendment to, or a release of, any of the provisions of Sections 2.0 or

3.0 or any part thereof at any time without liability to anyone for so doing.

10.3 Covenants Run with the Land/Subdivision

The burden of the covenants, charges and agreements set forth herein shall run with each Parcel, as applicable, and shall bind each Parcel, as applicable, and the successors in title thereto, and shall attach thereto and run with each and every part into which the same may be subdivided, but no part of the fee or soil of any Parcel shall pass to or be vested in an Owner under or by virtue of this Agreement.

Upon subdivision of any Parcel (the "Subdivided Parcel") by deposit of a Strata Plan under the *Strata Property Act* (British Columbia) the Strata Corporation so created shall:

- (a) perform and observe the Subdivided Lot owner's covenants herein at the expense of the strata lot owners;
- (b) enter into assumption agreements with the Other Owner, each in a form satisfactory to the Other Owner, acting reasonably, to assume all of the obligations of the Owner of the Subdivided Parcel hereunder to the same extent as if the Strata Corporation had been an original party to this Agreement; and
- (c) be entitled to give all permissions and consents permitted to be given by the Owner of the Subdivided Parcel hereunder.

If an Owner fails to comply with this Section 10.3, that Owner will remain liable for the performance of the obligations hereunder notwithstanding the subdivision of that Parcel by deposit of a Strata Plan.

10.4 Priority

Each Owner shall, after execution hereof by the Town and the Owners, do or cause to be done, at its own cost and expense, all things and acts necessary to ensure that the covenants and easements in Sections 2.0 and 3.0 inclusive are registered, at the cost of the Owners, against title to the Parcels, as applicable, with priority over all other financial liens, charges and encumbrances registered or pending registration against title to the Parcels, as applicable.

ARTICLE 11 MISCELLANEOUS

11.1 Interpretation

In this Agreement:

- (a) Enurement – Any reference to a party herein shall be deemed to include the heirs, executors, administrators, successors, assigns, employees, servants, agents, officers, contractors, licensees and invitees of such parties wherever the context so permits or requires.

- (b) Singular Gender – Wherever the singular or masculine is used in this Agreement, the same shall be construed as meaning the plural or the feminine or body corporate or politic, and vice versa, as the context or the parties so require.
- (c) Captions and Headings – The captions and headings appearing in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any of the provisions hereof.
- (d) References – This Agreement and the words “hereof”, “herein” and similar words refer to this Agreement as a whole and not to any Article, Section or other subdivision hereof and any reference in this Agreement to a designated Article, section or other subdivision is a reference to the designated Article, section or subdivision hereof.
- (e) Legislation – Any reference to a statute includes and is a reference to such statute and to the regulations made pursuant thereto, with all amendments made thereto and as in force from time to time, and to any statute and regulations that may be passed which have the effect of supplementing or superseding such statutes and regulations.

11.2 **Waiver**

No alleged waiver of any breach of this Agreement is effective unless it is an express waiver in writing of the breach in respect of which it is asserted against the party alleged to have given the waiver. Waiver by any party of any default hereunder by another party shall not be deemed to be a waiver by the first-mentioned party of any subsequent default by the party that defaulted.

11.3 **Notice**

Any demand or notice which may be given to any of the parties hereto pursuant to this Agreement shall be in writing, and shall be delivered, faxed or sent by postage prepaid mail and addressed to the intended recipient at the address of the recipient as set forth in Item 5 or Item 6 on Form C or such other address as the intended recipient may have most recently notified the other party hereto as an address for the delivery of notices hereunder. The time of receiving any such demand or notice shall be deemed to be the day of delivery or transmittal by facsimile if delivered or sent by facsimile by 4:30 p.m. on a business day (excluding Saturdays, Sundays and statutory holidays) to the place of the intended recipient, and, if otherwise delivered or transmitted by facsimile, on the next business day (excluding Saturdays, Sundays and statutory holidays) following the date of such delivery or transmittal, or on the fourth business day (excluding Saturdays, Sundays and statutory holidays) after the date of mailing thereof if sent by postage prepaid mail. During any interruption of mail service in or between the place of intended mailing and the location of the intended recipient of a demand or notice, a demand or notice shall not be effective if sent by mail until it is actually received by the intended recipient.

11.4 **Governing Law**

This Agreement shall be governed and construed in accordance with the laws in force in the

Province of British Columbia.

11.5 Entire Agreement

This is the entire agreement between the parties concerning the subject matter of this Agreement.

11.6 Further Assurances

The parties hereto shall do and cause to be done all things and execute and cause to be executed all documents that may be necessary to give proper effect to the intention of this Agreement.

11.7 Enurement

This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed as of the date first above written on Form C and Form D, which forms constitute a part hereof.

SCHEDULE "D" TO LAND EXCHANGE AGREEMENT
WATERFRONT SRW/COVENANT

[next page]

TERMS OF INSTRUMENT – PART 2**STATUTORY RIGHT OF WAY and SECTION 219 COVENANT (WATERFRONT & PLAZA WORKS)**

THIS AGREEMENT dated for reference the ___ day of _____, 201___, is

BETWEEN:

(the "Grantor")

AND:

TOWN OF GIBSONS, PO Box 340, Gibsons, British Columbia, V0N 1V0

(the "Town")

GIVEN THAT:

- A. The Grantor is the owner of those lands and premises located in Gibsons, British Columbia, legally described as NO PID, _____ (the "Development Lands");
- B. The Grantor is the lessee under a water lot lease agreement with the Province of British Columbia (the "Province") dated for reference _____, 20___, under licence number _____ over the following lands: Unsurveyed foreshore or land covered by water being part of the bed of Shoal Channel, Group 1, New Westminster District, containing 0.10 hectares, more or less; and District Lot 7005, Group 1, New Westminster District, Containing 0.280 hectares (collectively, the "Water Lease Area", which together with the Development Lands are referred to herein as the "Lands");
- C. The Town is the owner in fee simple of those lands having a legal description of PID: _____, _____ Except Part in Air Space Plan EPP _____ (the "Plaza Parcel");
- D. The Grantor intends to construct a development of certain commercial and residential uses on the Lands (the "Development"), which includes a public plaza located on part or all of Plaza Parcel (the "Plaza"), a waterfront public walkway (the "Waterfront Walkway"), and a pier (the "Pier"), all as generally shown on the site plan attached as Schedule "A", (together, the Plaza, the Waterfront Walkway, and the Pier comprise the "Works");
- E. The Grantor has, as part of and in connection with the Development, agreed to construct the Works, including all appurtenances ancillary and/or incidental thereto, to a standard and consistent with that required under the Servicing Agreement entered into between the parties, dated for reference the ___ day of _____, 20___, and to maintain the Works all to a standard satisfactory to the Town;

- F. The Grantor has agreed to grant to the Town a statutory right of way and sublicence for the operation and use of the Waterfront Walkway and that portion of the Pier located on or above the Lands (together the "Walkway") as areas open to the public in perpetuity, and this statutory right of way is necessary for the operation and maintenance of the Town's undertaking; and
- G. By the provisions of section 219 of the *Land Title Act*, a covenant, whether of a negative or positive nature, in respect of the use of land, in favour of the Town, may be registered as a charge against the title to that land and is enforceable against the owner and its successors in title, even if the covenant is not annexed to land owned by the Town.

THIS AGREEMENT is evidence that, and in consideration of ONE DOLLAR (\$1.00) paid by the Town to the Grantor and other good and valuable consideration (the receipt and sufficiency of which the Grantor hereby acknowledges), the Grantor grants to and covenants with the Town as follows:

1. **Statutory Right of Way for the Walkway** – Pursuant to section 218 of the *Land Title Act*, the Grantor hereby grants, conveys and confirms to the Town in perpetuity the full, free and uninterrupted right, liberty, easement and statutory right of way (the "Statutory Right of Way") on, over and across the Development Lands (the "Right of Way Area") at all times hereafter for the purpose of:
 - (a) permitting all members of the public, at their will and pleasure, 24 hours a day, 7 days a week, to pass, be on, and repass along and across the surface of the Development Lands, or any portion thereof, for rest, relaxation and recreation and to provide public access to and from the Town's streets and sidewalks adjacent to the Lands as pedestrian-only access (including motorized wheelchairs, scooters, and similar pedestrian aids, as well as bicycles), all in compliance with the Town's bylaws in force from time to time;
 - (b) permitting all members of the public, at their will and pleasure, 24 hours a day, 7 days a week, to pass, be on, and repass along and across the Development Lands, or any portion thereof, as necessary for the purpose of using any portion of the Plaza that is located outside of the Plaza Parcel, parking motor vehicles on the P1 level of the underground parkade located on the Development Lands, using the staircase and/or elevator from the parkade down to the Walkway level and up to the Plaza level, and crossing on foot or by wheelchair, scooter, or similar pedestrian aids, from the elevator through the building and across the Development Lands as necessary to access the Walkway and/or the Plaza;
 - (c) permitting the Town and the Town's elected and appointed officials, officers, employees, and contractors ("Town Personnel"), to enter on the Right of Way Area with works, vehicles, equipment, tools and materials for the purpose of inspecting the Right of Way Area and the Walkway and removing from the Right of Way Area such structures, improvements, fixtures, and other obstructions

whatsoever as, in the Town's opinion, acting reasonably, is necessary in order to ensure the safe and effective use and enjoyment of the Walkway, provided that the Town gives the Grantor 20 days prior written notice of its intention to do so, except no notice will be required in emergency situations; and

- (d) do all other things on the Right of Way Area as may be reasonably necessary, desirable or incidental to the ongoing use, operation, and enjoyment of the Walkway.
2. **Grant of Sublicence over Foreshore Areas** – The Grantor hereby grants to the Town, in perpetuity, a licence (the "Sublicence") to use that area of the Water Lease Area on which the Walkway is located (the "Sublicence Area") at all times hereafter for the purpose of:
- (a) permitting all members of the public, at their will and pleasure, 24 hours a day, 7 days a week, to pass, be on, and repass along and across the surface of the Sublicence Area, or any portion thereof, for rest, relaxation and recreation and to provide public access to and from the Town's streets and sidewalks adjacent to the Lands as pedestrian-only access (including motorized wheelchairs, scooters, and similar pedestrian aids, as well as bicycles), all in compliance with the Town's bylaws, in force from time to time; and
 - (b) permitting the Town and the Town Personnel, to enter on the Sublicence Area with works, vehicles, equipment, tools and materials for the purpose of inspecting the Sublicence Area and the Walkway and removing from the Sublicence Area such structures, improvements, fixtures, and other obstructions whatsoever as, in the Town's opinion, acting reasonably, is necessary in order to ensure the safe and effective use and enjoyment of the Walkway, provided that the Town gives the Grantor 20 days prior written notice of its intention to do so, except no notice will be required in emergency situations; and
 - (c) do all other things on the Sublicence Area as may be reasonably necessary, desirable or incidental to the ongoing use, operation, and enjoyment of the Walkway.
3. **Section 219 Covenant to Construct and Maintain** – Notwithstanding section 1, pursuant to section 219 of the *Land Title Act*, the Grantor covenants and agrees as follows:
- (a) the Grantor shall complete the design, construction, and installation of the Works on the Lands and the Plaza Parcel, in accordance with the standards and in the timeframe prescribed in the Servicing Agreement, in a good and workmanlike manner;
 - (b) the Grantor shall not use the Works for any purpose unless the Grantor has constructed and is maintaining the Works on the Lands and the Plaza Parcel, as the case may be, in accordance with this section 3;

- (c) the Grantor will, in perpetuity, keep clean, repair, and maintain the Works in good, safe and sufficient repair and condition as a reasonably prudent owner would do and to the reasonable satisfaction of the Town;
- (d) the Grantor will be solely responsible for the full cost of the work required pursuant to sections 3(a), and (c);
- (e) if the Grantor fails to keep, repair, and maintain the Works in good, safe and sufficient repair to the satisfaction of the Town's Director of Engineering, the Town shall be entitled to do such work after giving 20 days prior written notice to the Grantor (except in the case of an emergency, in which case no notice is required) specifying the default and requiring it to be remedied and the Grantor fails to carry out such work within such 20 day period, or if the work requires longer than 20 days to carry out, the Grantor has failed to commence carrying out the work and to diligently proceed with the work thereafter, and the Grantor shall pay the costs to the Town incurred in doing such work forthwith upon receipt of an invoice from the Town;
- (f) the Grantor agrees that the Town is entitled to obtain an order for specific performance or a prohibitory or mandatory injunction in respect of any breach by the Grantor of this section 3. The Grantor agrees that this section is reasonable given the public interest in the need for effective maintenance and protection of the Works from breaches of this section 3;
- (g) the covenants contained in this section 3 shall run with the Lands and each and every part into which the Lands may be subdivided or consolidated by any means (including subdivision plan, reference or explanatory plan, strata plan, bare land strata plan or lease), but no part of the fee of the Lands passes to or is vested in the Town under or by this section 3 and the Grantor may fully use the Right of Way Area and the Lands subject only to the common law and the rights, obligations and restrictions expressly set out in this Agreement;
- (h) the Grantor shall not subdivide the Lands pursuant to the *Strata Property Act* (British Columbia) unless the Grantor has complied in all respects with section 18 of this Agreement; and
- (i) if there is more than one owner of the Lands then they are jointly and severally responsible for performance of the obligations hereunder.

4. **Grantor's Obligations** – The Grantor must:

- (a) not do or permit to be done anything in the Right of Way Area or Sublicence Area which in the opinion of the Town, acting reasonably, may interfere with, injure or impair the operating efficiency of, or obstruct access to or the use of the Right of

Way Area, the Sublicence Area, the Works, or the rights granted under this Agreement;

- (b) permit the Town to peaceably hold and enjoy the rights hereby granted;
- (c) permit the Town to do all other things in the Right of Way Area and Sublicence Area which in the reasonable opinion of the Town are reasonably necessary for the safe use and preservation of the Right of Way Area or the Sublicence Area for the purposes of the Walkway, the Statutory Right of Way or the Sublicence;
- (d) not deposit or place garbage, debris or other material in the Right of Way Area or the Sublicence Area;
- (e) at its own expense, do or execute or cause to be done or executed all such further and other lawful acts, deeds, things, conveyances and assurances whatsoever for better assuring to the Town the rights, liberties, and right of way hereby granted; and
- (f) promptly discharge any builders liens which may be filed against title to the Plaza Parcel relating to any improvements, works or constructions which it undertakes or causes to be undertaken on the Plaza Parcel and to comply at all times with the *Builders Lien Act* (British Columbia) in respect of any improvements, works or construction undertaken on the Plaza Parcel.

5. **Town's Obligations** – The Town:

- (a) must do all things hereby authorized to be done by it over, through, and upon the Right of Way Area and Sublicence Area in a good and workmanlike manner so as to cause no unnecessary damage or disturbance to the Grantor, the Lands, the Right of Way Area, or the Sublicence Area or to any improvements thereon; and
- (b) for the purposes of carrying out the Grantor's obligations with respect to the construction and maintenance of the Plaza, the Town shall permit the Grantor to enter upon and use, from time to time, that part of the Plaza Parcel on which the Plaza is located, on the terms attached as Schedule "C".

6. **Town's Rights** – The Town:

- (a) is entitled to peaceably hold and enjoy the rights, liberties, Sublicence and Statutory Right of Way hereby granted without hindrance, molestation or interruption by the Grantor or any person, firm or corporation claiming by, through, under or in trust for the Grantor;
- (b) may remove upon delivery of written notice to and upon consultation with the Grantor anything placed on the Right of Way Area or the Sublicence Area by the Grantor which in the reasonable opinion of the Town may interfere with, injure or

impair the operating efficiency of, or obstruct access to or the use of the Walkway or the rights granted by the Statutory Right of Way or Sublicence, but must promptly restore the Right of Way Area and Sublicence Area to substantially its original condition, but for the Walkway, so far as is reasonably practicable;

- (c) on default by the Grantor of any of its obligations under this Agreement, may, but is not obliged to, rectify the default, provided that, except in the case of an emergency (in which case no notice is required), the Town must first give 20 days prior notice to the Grantor specifying the default and requiring it to be remedied and the Grantor fails to carry out such work within such 20 day period, or if the work requires longer than 20 days to carry out, the Grantor has failed to commence carrying out the work and to diligently proceed with the work thereafter. The Grantor shall reimburse Town for its reasonable, out of pocket expenses incurred in remedying such a default.

7. **Release** – The Grantor will not make any claims against the Town or Town Personnel and the Grantor hereby release and discharge the Town and Town Personnel from and against all damages, losses, costs, actions, causes of action, claims, demands, judgements, builders liens, liabilities, expenses, indirect or consequential damages (including loss of profits and loss of use and damages arising out of delays) and injuries (including personal injury and death) (collectively, “Losses”) which may, at any time, arise or accrue to the Grantor, in connection with this Agreement including, without limitation:

- (a) by reason of the Town or Town Personnel:
- (i) reviewing, accepting or approving the design, specifications, materials and methods for construction of the Works;
 - (ii) inspecting the Works;
 - (iii) performing any work in accordance with the terms of this Agreement or requiring the Grantor to perform any work pursuant to this Agreement;
 - (iv) exercising any of its rights under any statutory right of way granted to the Town pursuant to this Agreement; or
 - (v) withholding any permits pursuant to this Agreement;
- (b) that arise out of, or would not have been incurred but for:
- (i) the design, construction or installation (including any defective materials or faulty workmanship) of the Works;
 - (ii) this Agreement;

except to the extent such Losses are the result of the negligent acts or omissions on the part of the Town or Town Personnel. The release set out in this Section 7 will survive the expiration or earlier termination of this Agreement.

8. **Indemnity** – The Grantor hereby covenants and agrees with the Town to indemnify and save harmless and reimburse the Town and Town Personnel from and against all Losses which may arise or accrue to the Grantor any person, firm or corporation against the Town or Town Personnel or which the Town or Town Personnel may pay, incur, sustain or be put to by reason of or which would not or could not have been sustained "but for" any of the following:
- (a) the construction, installation, existence, maintenance, repair, replacement, removal, use or occupation of the Works, the Right of Way Area or the Sublicence Area;
 - (b) this Agreement, including the withholding of any permits by the Town pursuant to this Agreement;
 - (c) any personal injury, property damage or death occurring in or upon the Right of Way Area or Sublicence Area in whole or part from the exercise of the statutory right of way or sublicence in this Agreement by any party; or
 - (d) the release by the Town of any or all of the Town's rights under this Agreement or the loss of any rights purported to be granted hereby,
 - (e) the Town or Town Personnel:
 - (i) reviewing, accepting or approving the design, specifications, materials and methods for construction of the Works;
 - (ii) inspecting the Works;
 - (iii) performing any work in accordance with the terms of this Agreement or requiring the Grantor to perform any work pursuant to this Agreement; or
 - (iv) exercising any of its rights under any statutory right of way granted to the Town pursuant to this Agreement; or
 - (f) any and all Losses which may arise or accrue to any person, firm or corporation including a member of the public against the Town or any Town Personnel or which the Town or any Town Personnel may, incur, sustain or be put to, by reason of:
 - (i) any negligent act or omission or wilful misconduct of the Grantor or any of their contractors, subcontractors, employees, agents, licensees, invitees

and permittees in connection with the exercise of the obligations or responsibilities of the Grantor under this Agreement; or

- (ii) any default in the due observance and performance of the obligations or responsibilities of the Grantor under this Agreement,

except to the extent such Losses are the result of the negligent acts or omissions on the part of the Town or Town Personnel. This indemnity is both a personal covenant of the Grantor and an integral part of this Section 219 Covenant and will survive the expiration or earlier termination of this Agreement.

9. **Insurance** – The Grantor shall obtain and maintain, at the Grantor’s cost and expense, comprehensive general liability insurance protecting the Grantor from contractual and tort liability arising from bodily injury, death and property damage occurring on the Lands and the Plaza Parcel in an amount of not less than \$5 million per occurrence which shall:
- (a) name the Town as an additional insured;
 - (b) include a cross-liability clause;
 - (c) contain a waiver of subrogation rights against the Town; and
 - (d) contain an obligation requiring the insurer to provide the Town with 30 days’ notice of expiry, cancellation or material change in the terms of the policy.

The Grantor shall furnish the Town with a certificate of insurance evidencing placement of the insurance coverage required under this section prior to this Agreement being registered in the Land Title Office and from time to time thereafter at the request of the Town. This obligation is both a personal covenant of the Grantor and an integral part of the Section 219 Covenant contained herein.

10. **No Waiver** – No waiver of default by either party is effective unless expressed in writing by the party waiving default, and no condoning, overlooking or excusing by either party of a previous default of the other is to be taken to operate as a waiver of any subsequent default or continuing default, or to in any way defeat or affect the rights and remedies of the non-defaulting party.
11. **Discretion** – Wherever in this Agreement the approval of the Town is required, some act or thing is to be done to the Town’s satisfaction, the Town is entitled to form an opinion, or the Town is given a sole discretion:
- (a) the relevant provision is not deemed to have been fulfilled or waived unless the approval, opinion or expression of satisfaction is in writing signed by the Town’s Director of Planning or any other person duly authorized by the Council of the Town of Gibsons to perform the functions of the Director of Planning;

- (b) the approval, opinion or satisfaction is in the discretion of the Director of Planning acting reasonably in accordance with municipal engineering practice.

12. **Reduction of Right of Way Area** -- The Grantor and the Town agree as follows:

- (a) after completion of construction of the Development, the Grantor may cause a British Columbia Land Surveyor to prepare a statutory right of way plan showing as statutory right of way those parts of the Development Lands required for the Waterfront Walkway, the public-access portions of the Pier, the parking access described in section 1(b) above, and any portion of the Plaza that is located outside of the Plaza Parcel, and ongoing operation of and access thereof;
- (b) any statutory right of way plan prepared under this section must be delivered to the Town for review and approval, in its sole discretion, for the purposes of this section and the Grantor must cause such changes to the plan to be made as the Town, acting reasonably, considers necessary for the purposes of the Statutory Right of Way;
- (c) once the statutory right of way plan provided for in this section has been approved by the Town, the Grantor must cause the approved plan to be deposited in the Land Title Office and the Town must, within a reasonable time after request by the Grantor, execute and deliver to the Grantor a discharge of the Statutory Right of Way contained in this Agreement from any part of the Lands that is not shown as part of the statutory right of way on the approved plan;
- (d) upon deposit of the discharge in the Land Title Office, reference herein to the Right of Way Area is a reference to the statutory right of way area shown on the approved plan; and
- (e) the Grantor shall undertake any and all acts contemplated by this section at its sole cost and expense.

13. **No Effect on Powers** – This Agreement does not:

- (a) affect or limit the discretion, rights, duties or powers of the Town under the common law or any statute, bylaw, or other enactment;
- (b) affect or limit the common law or any statute, bylaw or other enactment applying to the Lands; or
- (c) relieve the Grantor from complying with the common law or any statute, bylaw or other enactment.

14. **Notice** – Any notice to be given pursuant to this Agreement must be in writing and must be delivered personally. The addresses of the parties for the purpose of notice are the addresses hereinbefore set out. Notice may be left at the relevant address in the same

manner as ordinary mail is left by Canada Post and is to be deemed to have been given when delivered. Any party may at any time give notice in writing to the other of any change of address and from and after the receipt of notice the address therein specified is to be deemed to be the address of such party for the giving of notice.

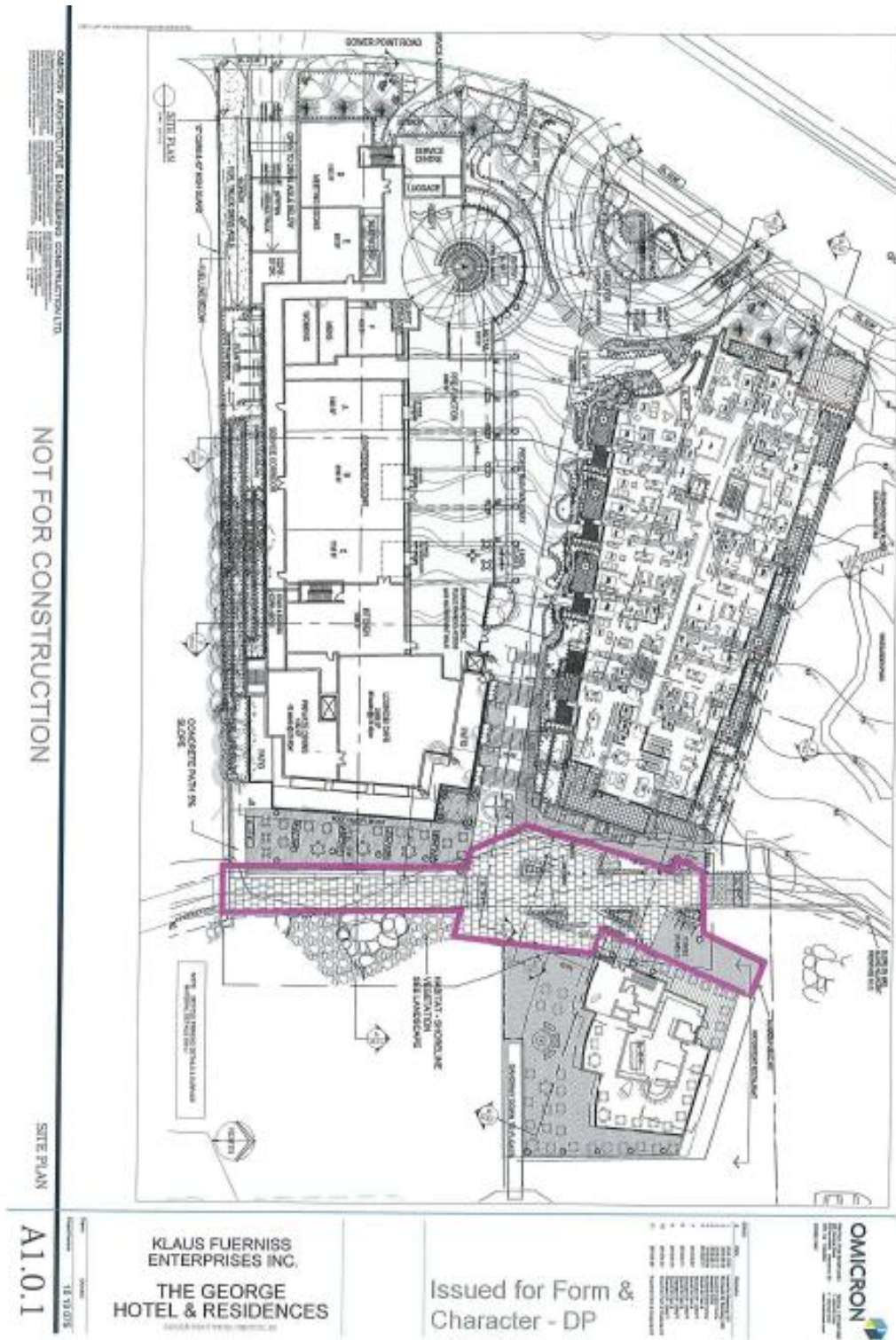
15. **Severance** – If any section, subsection, sentence, clause or phrase in this Agreement is for any reason held to be invalid by the decision of a court of competent jurisdiction, the invalid portion is to be severed and the decision that it is invalid does not affect the validity of the remainder of this Agreement, the parties hereby agreeing that they would have entered into the Agreement without the severed provision.
16. **Entire Agreement** – No amendment of this Agreement, is valid or binding unless in writing and executed by the parties.
17. **Headings** – The headings in this Agreement are inserted for reference and convenience only and must not be used to construe or interpret the provisions hereof.
18. **Assumption by Strata Corporation** – If, as and when the Grantor subdivides the Lands or any building on the Lands by a strata plan under the *Strata Property Act* (British Columbia) the Grantor will forthwith, and in any event before the first conveyance of any strata lot, cause the strata corporation then created (the “Strata Corporation”) to assume the Grantor’s obligations hereunder to the same extent as if the Strata Corporation had been an original party to this Agreement by executing and delivering to the Town an assumption agreement in all material respects in the form attached hereto as Schedule “B”. If the Grantor fails to comply with this section 18, the Grantor will remain liable for the performance of the obligations hereunder notwithstanding the strata subdivision of the Lands or any building on the Lands and notwithstanding the transfer of any portion of the Lands or any building on the Lands, including any strata lot, to a third party transferee. This section 18 does not limit or restrict the intent and meaning of section 23 herein.
19. **Strata Corporation Responsibility** – The Strata Corporation shall not enact any bylaw or make any rules or regulations in respect of the Lands, the Works, the Right of Way Area or the Sublicence Area which are inconsistent with this Agreement.
20. **Schedules** – Schedule “A” being a site plan showing the general form and location of the Lands, Development and the Works, Schedule “B” being the assumption agreement, and Schedule “C” being the Town’s form of licence agreement for carrying out work on the Plaza Parcel, form part of this Agreement.
21. **Interpretation** – In this Agreement:
 - (a) reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;

- (b) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;
 - (c) reference to a particular numbered section or article, or to a particular lettered Schedule, is a reference to the correspondingly numbered or lettered article, section or Schedule of this Agreement;
 - (d) if a word or expression is defined in this Agreement, other parts of speech and grammatical forms of the same word or expression have corresponding meanings;
 - (e) reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;
 - (f) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided;
 - (g) the provisions of s. 25 of the *Interpretation Act* with respect to the calculation of time apply;
 - (h) time is of the essence;
 - (i) all provisions are to be interpreted as always speaking;
 - (j) reference to a “party” is a reference to a party to this Agreement and to their respective successors, assigns, trustees, administrators and receivers;
 - (k) reference to a “day”, “month”, “quarter” or “year” is a reference to a calendar day, calendar month, calendar quarter or calendar year, as the case may be, unless otherwise expressly provided; and
 - (l) where the word “including” is followed by a list, the contents of the list are not intended to circumscribe the generality of the expression preceding the word “including”.
22. **Parties** – Every reference in this Agreement to a party is deemed to include the heirs, executors, administrators, successors, assigns, employees, agents, officers, and invitees of such party wherever the context so requires or allows.
23. **Interest In Land and Enurement** – This Agreement runs with the Lands and each and every part into which the Lands may be subdivided or consolidated by any means (including subdivision plan, reference or explanatory plan, strata plan, bare land strata plan or lease), but no part of the fee of the Lands passes to or is vested in the Town under or by this Agreement and the Grantor may fully use the Right of Way Area, the Sublicence Area and Lands subject only to the common law and the rights, obligations and restrictions expressly set out in this Agreement. This Agreement enures to the benefit of and is binding on the parties notwithstanding any rule of law or equity to the contrary.

As evidence of their agreement to be bound by the above terms, the parties each have executed and delivered this Agreement by executing Part 1 of the *Land Title Act* Form C and D to which this Agreement is attached and which forms part of this Agreement.

SCHEDULE "A" TO WATERFRONT SRW/COVENANT

SITE PLAN



SCHEDULE "B" TO WATERFRONT SRW/COVENANT
ASSUMPTION AGREEMENT

THIS AGREEMENT is dated for reference _____

BETWEEN:

THE OWNERS, STRATA PLAN _____

(the "Strata Corporation")

AND:

TOWN OF GIBSONS, Box 340, Gibsons, British Columbia, V0N 1V0

(the "Town")

AND:

(together, the "Owner")

WHEREAS:

- A. On the date that application was made to the New Westminister Land Title Office for deposit of Strata Plan ____, the Owner was the registered owner of the freehold estate in the Land shown on the Strata Plan (the "Lands");
- B. The Owner has granted to the Town a Statutory Right of Way and Section 219 Covenant for construction and maintenance of certain works, which agreement is registered in the New Westminister Land Title Office under numbers _____ and _____, as well as a sublicence of Water Lot Lease _____ (collectively, the "Charges");
- C. It is a condition of the Charges that the Strata Corporation enter into this Assumption Agreement in respect of the Charges,

NOW THEREFORE IN CONSIDERATION of the premises and the sum of \$10.00 paid by each of the Owner and the Town to the Strata Corporation and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by the Strata Corporation), the Strata Corporation hereby covenants and agrees as follows:

- 1. The Strata Corporation covenants and agrees that the Strata Corporation will be bound by and will observe and perform all of the covenants, restrictions and agreements contained in the Charges, including without limitation the covenant to indemnify in

section 8 of the Charges and the covenant to construct and maintain the Works (as defined in the Charges) in section 3.

- 2. The Strata Corporation agrees that the Town is entitled to obtain an order for specific performance or a prohibitory or mandatory injunction in respect of any breach by the Strata Corporation of the Charges. The Strata Corporation agrees that this section is reasonable given the public interest in the need for effective maintenance and protection of the access from breaches of the Charges.
- 3. This Agreement will enure to the benefit of and will be binding upon the parties hereto and their heirs, executors, administrators, successor and assigns.
- 4. To evidence its agreement, the Strata Corporation has executed this Assumption Agreement as of the date set out above.

THE OWNERS, STRATA PLAN ____ by its)
 authorized signatory:)
)
) C/S
)
 _____)
 Authorized Signatory)
)

SCHEDULE "C" TO WATERFRONT SRW/COVENANT

PLAZA CONSTRUCTION AND MAINTENANCE LICENCE AGREEMENT

THIS AGREEMENT dated for reference the ___ day of _____, 20 __, is

BETWEEN:

TOWN OF GIBSONS, PO Box 340, Gibsons, British Columbia, V0N 1V0

(the "Town")

AND:

(the "Transferee")

WHEREAS:

- A. The Transferee is the registered owner of lands located in the Town of Gibsons, British Columbia, and more particularly described as follows: NO PID, _____ (the "Development Lands");
- B. The Town is the owner in fee simple of those lands having a legal description of PID: _____, _____ Except Part in Air Space Plan EPP _____ (the "Plaza Parcel")
- C. The Grantor intends to construct a development of certain commercial and residential uses on the Lands (the "Development"), which includes a public plaza located on part or all of the Plaza Parcel (the "Plaza");
- D. The Grantor has, as part of and in connection with the Development, agreed to construct and maintain the Plaza to a standard satisfactory to the Town and in consistent with the Servicing Agreement entered into between the parties, dated for reference the ___ day of _____, 20__ (the "Servicing Agreement");
- E. The Transferee granted the Town a Section 219 Covenant over the Development Lands, registered in the New Westminster Land Title Office under number _____ (the "Covenant") respecting the construction and maintenance of certain works on the Development Lands and the Plaza Parcel, including the construction and maintenance of the Plaza on the Plaza Parcel;
- F. To facilitate the construction and maintenance of the Plaza on the Plaza Parcel by the Transferee, the Town has agreed to grant the Transferee this licence over the Plaza Parcel for that purpose;

THIS AGREEMENT is evidence that, and in consideration of ONE DOLLAR (\$1.00) paid by the Transferee to the Town and other good and valuable consideration (the receipt and sufficiency of which the Transferee hereby acknowledges), the Transferee grants to and covenants with the Town as follows:

1. The Town, for itself, its successors and assigns, hereby gives and grants unto the Transferee a non-exclusive licence on, over, and through the Plaza Parcel for the purpose of:
 - (a) installing the Plaza in accordance with the Servicing Agreement, the Covenant, and any other permits, plans, or agreements related to the construction of the Plaza, and any amendments to those permits, plans, or agreements, copies of which are filed at the office of the Town of Gibsons; and
 - (b) maintaining, repairing, and altering of the Plaza in accordance with the Servicing Agreement, the Covenant, and all applicable Town bylaws.
2. The term of this Agreement shall commence on the date it is signed by both parties, and shall terminate on the date that the Development is substantially destroyed or removed (the "Term").
3. The Transferee shall carry out the construction, maintenance, and repair of the Plaza in a good and workman-like manner in accordance with the Servicing Agreement, the Covenant, and all applicable Town bylaws. The Transferee will obtain all required governmental authorizations and permits for the Plaza and will maintain the Plaza in good condition so as not to constitute a hazard to persons using the Plaza Parcel. The Transferee shall provide to the Town on completion of the Plaza and any future modification of the Plaza, as-constructed drawings of the Plaza.
4. The Transferee covenants and agrees with the Town as follows:
 - (a) to use the Plaza Parcel only for the purposes outlined in section 1 of this Agreement and for no other purposes whatsoever without the prior written consent of the Town in its sole discretion;
 - (b) not to alter or modify the Plaza Parcel in any way beyond the scope of the Plaza or install any buildings or structures without obtaining the Town's prior written consent and providing to the Town all supporting documentation required by the Town, including site plans relative to the proposed alteration or modification;
 - (c) to keep the area adjacent to the Plaza Parcel free and clear of obstructions and open to pedestrian access at all times, exercising the greatest care in the use and occupation of the Plaza Parcel;
 - (d) not to cause, maintain or permit anything that may be or become a nuisance or annoyance on the Plaza Parcel to the owners or occupiers of adjoining lands or to

the public, including by the accumulation of rubbish or unused personal property of any kind or the blocking of the view of any established adjoining business during its hours of operation;

- (e) to pay all costs and expenses of any kind whatsoever associated with and payable in respect of the Plaza Parcel as a result of the occupation of it by the Transferee, including without limitation all taxes, levies, charges and assessments, permit and licence fees, repair and maintenance costs, electrical, water and other utility charges associated with the Plaza Parcel, and payments for work and materials, and should the Transferee fail to pay and discharge any such taxes, levies, and charges described above, the Town may do so at the cost of the Transferee and charge the Transferee a 20% administration fee for doing so, and the Transferee shall pay the cost forthwith upon receipt of invoice of the same from the Town;
 - (f) to maintain the Plaza Parcel and the Plaza on the Plaza Parcel in a safe, clean, tidy and sanitary condition and to make promptly all needed repairs to all Plaza, whether for reasonable wear and tear or otherwise, at the cost of the Transferee;
 - (g) to not allow any refuse, debris, garbage, waste, contaminants, pollutants or other loose or objectionable material to accumulate or be deposited on the Plaza Parcel, but rather to dispose of the same regularly and continuously and to take all reasonable measures to ensure that any effluent or other substance discharged, spilled, emitted, released or permitted to escape, seep or leak on or adjacent to the Plaza Parcel or into any ditches, culverts, drains or sewers on or adjacent to the Plaza Parcel does not contain any environmental contaminants or any substances harmful to any sewage disposal works; and
 - (h) to promptly discharge any builders lien which may be filed against the Plaza Parcel relating to any Plaza or other improvement which the Transferee undertakes on the Plaza Parcel, to comply with all times with the *Builders Lien Act* (British Columbia), and to indemnify the Town for all cost incurred by the Town arising out of any claim of builder's lien relating to the Plaza Parcel.
5. The Transferee accepts the Plaza Parcel in an "as is" condition and any improvements made to the Plaza Parcel by the Transferee at any time during the currency of this Agreement, to make the Plaza Parcel suitable for the purposes of the Transferee hereunder, shall be at the risk, cost and expense of the Transferee.
 6. The Transferee acknowledges and agrees that any rights granted by the Town to the Transferee herein are not exclusive and subject to the public's right to pass over the Plaza Parcel.
 7. At the end of the Term or other cancellation of this Agreement, the Transferee shall:

- (a) remove all works placed by it on the Plaza Parcel which the Town requires it to remove in writing, and any works not removed shall be forfeited and become the permanent property of the Town, without any compensation to the Transferee whatsoever; and
- (b) leave the Plaza Parcel in a clean, neat and sanitary condition satisfactory to the Town, and shall restore the quality of the Plaza Parcel to its original condition as nearly as possible and free of any contamination or pollution of any kind.

If the Transferee fails to leave the Plaza Parcel in a condition required by this section, the Town may do so on behalf of the Transferee and the Transferee shall, on demand, compensate the Town for all costs incurred by the Town respecting the removal of the Plaza, whether they were forfeited to the Town or not, or for the restoration of the Plaza Parcel, plus a 20% administration fee.

- 8. Nothing contained or implied herein shall prejudice or affect the rights and powers of the Town in the exercise of its functions under any public or private statutes, bylaws, orders and regulations, all of which may be fully and effectively exercised in relation to the Plaza Parcel as if the Agreement has not been executed and delivered by the Town.
- 9. The Transferee will indemnify and save harmless the Town from and against all liability, actions, damages, proceedings, costs, claims, demands and expenses whatsoever (including solicitor's fees and litigation expenses) which the Town may incur or suffer or be put to by reason of or in connection with or arising from any breach, violation or non-performance by the Transferee of any obligation hereunder to be observed or performed by the Transferee, any wrongful act or neglect of the Transferee on or about the Plaza Parcel, any damage to property related to the Transferee's use and occupation of the Plaza Parcel, or the death or injury to any person related to the Transferee's use and occupation of the Plaza Parcel.
- 10. From the date of commencement of construction of the Plaza, the Transferee shall obtain and keep in force comprehensive general liability insurance in the amount of not less than \$5,000,000.00 covering third party claims arising from the construction or maintenance of the Plaza, naming the Town as an additional insured. A copy of the policy of insurance or a certificate of insurance issued by the insurer confirming that the required coverage is in place shall be provided by the Transferee to the Town each year. The policy of insurance shall:
 - (a) be underwritten by an insurance company licenced to do business in British Columbia;
 - (b) include that the Town is protected notwithstanding any act, neglect or misrepresentation by the Transferee which might otherwise result in the avoidance of a claim and that such policy is not affected or invalidated by any act,

omission or negligence of any third party which is not within the knowledge and control of the insureds;

- (c) include a cross liability clause; and
- (d) include a provision that the insurer will give the Town 30 days written notice of any material changes in the insurance coverage or of cancellation or termination of it.

11. If the Transferee transfers the fee simple interest in the Development Lands to any other person or stratifies Development Lands creating a strata corporation (the "New Owner"), the Transferee shall continue to indemnify and save harmless the Town pursuant to paragraph 9 hereof until such time as the Transferee has delivered to Town a copy of an assignment agreement originally signed by the New Owner by which the Transferee has assigned, and the New Owner has assumed, absolutely, the benefit and burden of this Agreement and a copy of any policy of insurance or certificate of insurance required under this Agreement. The assignment agreement shall be in the form attached hereto as Appendix 1.
12. This Agreement shall enure to the benefit of and be binding upon the parties hereto, their successors and assigns.
13. The Transferee and all agents, servants and workers of the Transferee are not and shall not be deemed to be agents, servants or employees of the Town.
14. Wherever the singular or the masculine are used, the same shall be construed as meaning the plural or the feminine or the body politic or corporate where the context or the parties hereto so require.
15. The Town and Transferee shall forthwith, do or cause to be done all acts or things necessary to give proper effect to the intention of this Agreement.
16. The invalidity of any particular provision of this Agreement shall not affect any other provision hereof and this Agreement shall be construed as if such invalid provision were omitted.

IN WITNESS WHEREOF the parties have duly executed this Agreement this ___ day of _____, 20___.

TOWN OF GIBSONS by its authorized signatories:

Name:

Name:

_____ by its authorized signatories:

Name:

Name:

APPENDIX 1 TO PLAZA CONSTRUCTION AND MAINTENANCE LICENCE AGREEMENT
ASSIGNMENT AGREEMENT

This Agreement made the ___ day of ___ 20__.

Between

(the "Assignor")

And

(the "Assignee")

WHEREAS:

- A. By an Agreement dated _____ 20__ a copy of which is annexed hereto as Schedule A (the "Agreement") between the Town of Gibsons as transferor and _____, as Transferee, the Town of Gibsons granted to the Transferee a nonexclusive licence more particularly described in the Agreement for the purposes and upon the term and conditions set out herein.
- B. It was a term of the Agreement that if the Transferee therein should transfer the fee simple in the Development Lands (as defined in the Agreement) to any other person or if the Transferee should stratify the Development Lands, the obligations of the Transferee to indemnify and save harmless the Town of Gibsons would continue until this form of Assignment Agreement originally signed by the new owner was delivered to the Town of Gibsons.
- C. The Assignor herein as the registered owner of the Development Lands has deposited a strata subdivision plan with respect to the Development Lands, thereby creating the Assignee [OR: has transferred or intends to transfer the fee simple interest in the Development Lands to the Assignee] and now wishes, as contemplated by the Agreement, to transfer and assign the benefit of the Agreement to the Assignee and the Assignee has agreed to assume the burden of the Agreement from the Assignor.

Now therefore, in consideration of the said fee simple transfer of the Development Lands and the covenants herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the parties hereto, the parties agree as follows:

- 1. The Effective Date means _____ (date of transfer of Development Lands).

2. As of the Effective Date the Assignor assigns to the Assignee all of the Assignor's right, title and interest in and to the Agreement.
3. The Assignor represents and warrants to the Assignee that:
 - (a) the covenants and agreements set out in the Agreement have been and will to the Effective Date be duly observed and performed by the Assignor;
 - (b) the Assignor has the authority to assign the benefit of the Agreement subject to no restriction of any kind;
 - (c) subject to the observance and performance of the other covenants and agreements by the Assignee, the Assignee may exercise the full benefit of the Agreement and the right, licence and liberty granted under it without interruption except as provided in the Agreement.
4. During the currency of the Agreement, the Assignee will:
 - (a) not assign the benefit of the Agreement except in accordance with the Agreement;
 - (b) assume the burdens and obligations contained in the Agreement and perform all of the covenants and agreements under the Agreement as if the Assignee was the Transferee originally named in the Agreement; and
 - (c) indemnify and save harmless the Assignor from all actions, suits, costs, losses, damages, charges and expenses for or in respect of any breach by the Assignee of the Agreement covenants and agreements arising on or after the Effective Date.
5. Neither the assignment herein, nor the payment of any money or the performance by the Assignee of any of the Agreement covenants and agreements will waive or modify in any respect any of the rights of the Town of Gibsons or relieve the Assignor from observing and performing the Agreement covenants and agreements until such time as an originally signed copy of this Assignment Agreement has been delivered to the Town of Gibsons PROVIDED that upon delivery of the said copy of this Assignment Agreement as aforesaid all obligations of the Assignor in respect of the Agreement covenants and agreements which have not accrued before the date of such delivery will be at an end, and thereafter only the Assignee will be responsible for performance of the Agreement covenants and agreements then accruing or arising.
6. This Assignment Agreement will enure to the benefit of and be binding upon the parties to this Assignment Agreement and their respective personal representatives, successors and permitted assigns.

IN WITNESS WHEREOF the parties have duly executed this Agreement this __ day of _____, 20__.

SIGNED, SEALED AND DELIVERED in the presence of:)

_____ by its authorized signatories:)

Witness)

Name:)

Address)

Name:)

Occupation)

SIGNED, SEALED AND DELIVERED in the presence of:)

[Assignee] by its authorized signatories:)

Witness)

Name:)

Address)

Name:)

Occupation)

CONSENT AND PRIORITY AGREEMENT

WHEREAS [insert name] (the "Chargeholder") is the holder of a Mortgage and Assignment of Rents (called the "Charges") encumbering the lands (the "Lands") described in item 2 of the *Land Title Act* Form C attached hereto, which were registered in the Victoria Land Title Office under numbers [insert] respectively.

THEREFORE THIS CONSENT AND PRIORITY AGREEMENT IS EVIDENCE THAT IN CONSIDERATION OF \$1.00 AND OTHER GOOD AND VALUABLE CONSIDERATION PAID BY THE TRANSFEREE TO THE CHARGEHOLDER:

1. The Chargeholder hereby consents to the granting and registration of the Section 219 Covenant and Statutory Right of Way attached hereto (the "Covenant and SRW") and the Chargeholder hereby agrees that the Covenant and SRW shall be binding upon its interest in and to the Lands.
2. The Chargeholder hereby grants to the transferee described in item 6 of the *Land Title Act* Form C attached hereto priority for the Covenant and SRW over the Chargeholder's right, title and interest in and to the Lands, and the Chargeholder does hereby postpone the Charges and all of its right, title and interest thereunder to the Covenant and SRW as if the Covenant and SRW had been executed, delivered and registered prior to the execution, delivery and registration of the Charges.

IN WITNESS WHEREOF, the Chargeholder has executed and delivered this Consent and Priority Agreement by executing the *Land Title Act* Form D above which is attached hereto and forms part of this Agreement.

SCHEDULE "E" TO LAND EXCHANGE AGREEMENT

WATERWORKS SRW

[next page]

TERMS OF INSTRUMENT – PART 2

STATUTORY RIGHT OF WAY (WATERWORKS)

This Agreement dated for reference the ____ day of _____, 201__ is

BETWEEN:

(the “Grantor”)

AND:

TOWN OF GIBSONS, PO Box 340, Gibsons, British Columbia, V0N 1V0

(the “Town”)

GIVEN THAT:

- A. The Grantor is the owner of those lands and premises located in Gibsons, British Columbia, legally described as NO PID, _____ (the “Land”);
- B. Section 218 of the *Land Title Act*, R.S.B.C., c. 250 enables the Grantor to grant in favour of the Town an easement without a dominant tenement to be known as a statutory right of way;
- C. The Grantor has agreed to grant to the Town a statutory right of way to facilitate the construction, installation, improvement, extension, removal, alteration, repair, maintenance, operation, replacement and use of certain works, including all appurtenances ancillary and incidental thereto, all generally described as follows: all existing pipes, valves, fittings, pumps, conduits, culverts, facilities and appurtenances located on the Land and necessary or convenient for the carrying of water, sanitary sewage, storm sewage, or drainage as part of the Grantee's system of waterworks, sewage works and drainage works (the “Works”);
- D. The statutory right of way granted by this agreement is necessary for the operation and maintenance of the Town’s undertaking.

THIS AGREEMENT is evidence that, pursuant to s. 218 of the *Land Title Act*, and in consideration of \$1.00 paid by the Town to the Grantor and other good and valuable consideration (the receipt and sufficiency of which the Grantor acknowledges), the Grantor covenants and agrees with the Town as follows:

1. **Grant of Statutory Right of Way** – The Grantor hereby grants, conveys and confirms to the Town in perpetuity the full, free and uninterrupted right, liberty, easement and

statutory right of way for the Town, its officers, employees, contractors, licensees, and agents, in common with the Grantor, at all times hereafter from time to time at their will and pleasure to enter, go, be on, pass and repass, with or without vehicles, personal property and equipment, upon, over, under and across the Land to:

- (a) construct, install, remove, replace, repair, alter, maintain, clean, inspect, operate and use the Works from time to time in the Town's discretion;
- (b) have unobstructed access to and from the Land at any and all times from adjacent public streets;
- (c) make surveys and tests and establish grades and levels;
- (d) excavate or otherwise alter the contours of the Land and to backfill trenches;
- (e) store personal property (including equipment) necessary to exercise its rights under this agreement, provided that the Town will consult the Grantor as to the duration and location of such storage;
- (f) remove from the Land such structures, improvements, fixtures, fences and driveways, trees, shrubs, plants, vehicles, storage facilities and other obstructions whatsoever as, in the Town's opinion, acting reasonably, is necessary in order to repair, alter, operate, maintain, clean, inspect or replace the Works provided the Town repairs any damage to the Land including the repaving of any previously paved areas and provided that the Town gives the Grantor 14 days prior written notice of its intention to do so; and
- (g) do all other things on the Land as may be incidental to, or reasonably necessary in connection with, the foregoing.

2. **Grantor's Obligations** – The Grantor will:

- (a) not do or permit to be done anything which in the opinion of the Town may interfere with, injure or impair the operating efficiency of, or obstruct access to or the use of, the Land, the Works or the rights granted to the Town under this agreement;
- (b) not place, install or construct any building, structure, mobile home or other improvement (including any paving, walls or fences) on any portion of the Land in which the Works are located without the Town's approval;
- (c) not diminish or increase the soil cover over any Works installed on the Land without the Town's approval; and
- (d) permit the Town to peaceably hold and enjoy the rights hereby granted.

3. **Additional Town Rights – The Town:**

- (a) is entitled to peaceably hold and enjoy the rights, liberties and statutory right of way hereby granted without hindrance, molestation or interruption by the Grantor or any person, firm or corporation claiming by, through, under or in trust for the Grantor;
- (b) in its sole discretion may at any time remove any or all of the Works installed by the Town over, upon or under the Land; and
- (c) notwithstanding section 3(b), if the Town releases or discharges this agreement in whole or in part, the Town will not be responsible or obligated in any way to remove or pay for the cost of removal of any Works from the Land.

4. **Town's Obligations – The Town must:**

- (a) do all things hereby authorized to be done by it over, through, under, and upon the Land in a good and workmanlike manner so as to cause no unnecessary damage or disturbance to the Grantor, the Land, or to any improvements thereon;
- (b) not bury, without the prior written consent of the Grantor, construction debris or rubbish in excavations or backfill;
- (c) rake up all rubbish and construction debris it creates in order to leave the Land in a reasonably neat and clean condition; and
- (d) exercise the utmost care not to damage the Land or any improvement on the Land and, if the Town should cause any such damage, restore such damaged Land or improvements thereon to as close to their pre-damaged condition as is reasonably practical with reasonable dispatch, or, where the Town deems restoration to be impractical, reimburse the Grantor for all damage the Town has caused but not restored.

5. **Ownership of Works – All chattels and fixtures installed by the Town over, on, in or under the Land as part of the Works are and shall remain owned by the Town, any rule of law or equity to the contrary notwithstanding.**

6. **No Town Obligations – No right herein granted to or reserved by the Town requires the Town to clean, repair or maintain the Works or the Land, except as expressly provided herein.**

7. **Termination and Discharge of Statutory Right of Way – Upon the removal of all Works from the Land, the Grantor may submit a discharge of this Agreement to the Town and the Town shall, within a reasonable time after request by the Grantor, execute and deliver to the Grantor such discharge of this Agreement. Upon deposit of the discharge in the**

Land Title Office, this Agreement shall be at an end and the Town shall have no further rights to cross over the Land or install Works thereon.

8. **No Waiver** – No waiver by the Town of default by the Grantor is effective unless expressed in writing by the party waiving default, and no condoning, overlooking or excusing by a party of a previous default of the other will operate as a waiver of any subsequent continuing default.
9. **Notice** – Any notice required or permitted to be given pursuant to this agreement must be in writing and delivered personally or sent by prepaid express mail to the addresses set out above. If notice is delivered personally, it will be considered given when it is delivered. If notice is mailed, it will be considered given 5 days after mailing by deposit at a Canada Post mailing point or office. A party may only change its address for delivery under this section by giving notice to the other party in accordance with this section. Notwithstanding the foregoing, the Town may provide notice to the Grantor at the address indicated on title to the Land in the land title office from time to time.
10. **Severance** – If any portion of this agreement is for any reason held to be invalid by the decision of a court of competent jurisdiction, the invalid portion is to be severed and the decision that it is invalid does not affect the validity of the remainder of this agreement.
11. **Entire Agreement** – This agreement is the entire agreement between the parties and neither the Town nor the Grantor has given or made any representations, warranties, guarantees, promises, covenants or agreements to the other except those expressed in this agreement, and this agreement may only be amended by written agreements by the parties.
12. **Interpretation** – In this agreement:
 - (a) reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;
 - (b) time is of the essence; and
 - (c) where the word “including” is followed by a list, the contents of the list are not intended to circumscribe the generality of the expression preceding the word “including”.
13. **Interest In Land and Enurement** – This agreement burdens and runs with, and binds the successors in title to, the Land and each and every part into which the Land may be subdivided (including by deposit of a strata plan of any kind) and any land with which the Land may be consolidated. This agreement enures to the benefit of and is binding on the parties and their respective heirs, executors, successors and assignees, as the case may be.

As evidence of their agreement to be bound by this agreement, the parties have executed Part 1 of the *Land Title Act* Form C to which this agreement is attached and which forms part of this agreement.

CONSENT AND PRIORITY AGREEMENT

WHEREAS *[insert name]* (the "Chargeholder") is the holder of a Mortgage and Assignment of Rents (called the "Charges") encumbering the lands (the "Lands") described in item 2 of the *Land Title Act* Form C attached hereto, which were registered in the Victoria Land Title Office under numbers *[insert]* respectively.

THEREFORE THIS CONSENT AND PRIORITY AGREEMENT IS EVIDENCE THAT IN CONSIDERATION OF \$1.00 AND OTHER GOOD AND VALUABLE CONSIDERATION PAID BY THE TRANSFEREE TO THE CHARGEHOLDER:

1. The Chargeholder hereby consents to the granting and registration of the Statutory Right of Way attached hereto (the "SRW") and the Chargeholder hereby agrees that the SRW shall be binding upon its interest in and to the Lands.
2. The Chargeholder hereby grants to the transferee described in item 6 of the *Land Title Act* Form C attached hereto priority for the SRW over the Chargeholder's right, title and interest in and to the Lands, and the Chargeholder does hereby postpone the Charges and all of its right, title and interest thereunder to the SRW as if the SRW had been executed, delivered and registered prior to the execution, delivery and registration of the Charges.

IN WITNESS WHEREOF, the Chargeholder has executed and delivered this Consent and Priority Agreement by executing the *Land Title Act* Form D above which is attached hereto and forms part of this Agreement.