

TERMS OF INSTRUMENT – PART 2

SECTION 219 COVENANT – HOTEL USE

THIS COVENANT dated for reference, 2017 is

BETWEEN:

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

(the “**Owner**”)

AND:

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

(the “**Town**”)

WHEREAS:

- A. The Owner is the owner of those lands and premises located in Gibsons, British Columbia, legally described as NO PID, _____ (the “**Land**”)
- B. The Owner intends to construct on the Land certain commercial and residential uses (the “**Development**”) in accordance with the plans attached as Schedule “**A**” to this Agreement and with the George Hotel & Residences Zoning Amendment Bylaw No. 1065-33, 2015 (the “**Zoning Amendment Bylaw**”);
- C. The Development consists of a residential building, hotel building, conference centre, including spa, pools, cafes, lounge, retails uses, restaurant and marina, as generally shown on Schedule “**A**” and more particularly described in the Zoning Amendment Bylaw;
- D. It is important to the Town that the principle use of the hotel building in the Development is for a hotel and ancillary purposes, despite other uses that may be permitted from time to time by the Town of Gibsons Zoning Bylaw No. 1065, 2007, as amended or replaced from time to time;
- E. Section 219 of the *Land Title Act* authorizes an owner to grant to a municipality a covenant containing provisions regarding the use of land, or the use of a building on or to be erected on the land, or that land is to be built on in accordance with the covenant, or is not to be built on except in accordance with the covenant, or is not to be built on, or that land is not to be subdivided except in accordance with the covenant, or is not to be subdivided;
- F. By this Covenant, the Owner agrees with the Town that the use of the Land shall include a Hotel (as hereinafter defined) on the terms and conditions hereinafter appearing.

NOW THEREFORE THIS AGREEMENT WITNESSES that pursuant to Section 219 of the *Land Title Act* and in consideration of the premises of this Covenant, the sum of Ten Dollars (\$10.00), now paid by the Town to the Owner, and other good and valuable consideration (the receipt and sufficiency whereof is hereby acknowledged), the Owner covenants and agrees with the Town as follows:

1. **Use of Land** – The Owner covenants and agrees with the Town that the Land must only be built on and used in strict accordance with this Agreement.
2. **Definitions** – In this Covenant:
 - (a) “Guest Room” means a room or suite for Public Lodging Use within the Hotel, whether strata titled or not;
 - (b) “Hotel” is defined in section 4; and
 - (c) “Public Lodging Use” means the use of a Guest Room in the Hotel by the transient public for temporary accommodation and related purposes by tourists, visitors, guests and travellers.
3. **Interpretation** – In this Covenant references to the Land include the Hotel and the Guest Rooms within the Hotel.
4. **Restriction on Use of Land** – The use of the Land must include a full-service hotel, having a minimum of 100 Guest Rooms and providing ancillary retail, commercial, restaurant, lounge, office, and recreation facilities customarily accessory to and part of a full-service hotel (the “Hotel”). Without limiting the foregoing, the Land and the Development thereon may be used for additional residential or office use, in addition to the required Hotel use, as part of a mixed-use development.
5. **Covenant to Build Hotel** – The Owner must construct the Hotel in strict compliance with this Covenant and in accordance with any development permit relating thereto approved by Town Council.
6. **Covenant to Operate Hotel** – After construction of the Hotel, the Owner shall operate the Hotel or cause the Hotel to be operated such that its Guest Rooms are used only for Public Lodging Use and for no other purpose, and the Owner shall take or cause to be taken all reasonable commercial steps to keep the Hotel open for business, except in the case of substantial damage or destruction by natural hazard, by fire, or by other insurable hazard. Nothing in this covenant shall prevent the Owner, in its discretion, from entering into tenancy or other contractual arrangements and agreements with one or more operators of the Hotel’s facilities and amenities on such terms as the Owner may require in connection with the Owner’s operation of the Hotel.
7. **No Stratification** – The Owner covenants and agrees with the Town that the Owner shall not subdivide the Hotel by any method, including by way of a building strata plan under the provisions of the *Strata Property Act* or any other legislation dealing with the creation of separate titles to portions of a building or property provided always that nothing herein shall

prevent the Owner from otherwise subdividing the Land as required, subject to obtaining the necessary governmental and municipal approvals, to accommodate the other components of the Development as contemplated in Schedule A and more particularly described in the Zoning Amendment Bylaw.

8. **Joint and Several** – Where the Owner is more than one person those persons shall be bound jointly and severally by this Covenant.
9. **No Exemption from Jurisdiction** – Nothing in this Covenant shall exempt the Owner or the Land from any statutory requirements or imposition or from the ordinary jurisdiction of the Council of the Town, its bylaws, permits, regulations and orders.
10. **Approvals** – Wherever in this Covenant the approval or consent of the Town is required, or some act or thing is to be done to the satisfaction of the Town:
 - (a) such consent or approval may be given by resolution of the Council of the Town or by an officer of the Town designated in writing by a resolution of Council of the Town for such purpose;
 - (b) such provisions shall not be deemed to have been fulfilled or waived unless the approval, consent or expression of satisfaction is in writing and no prior approval, consent or expression of satisfaction and no condoning, excusing or overlooking by the Town on previous occasions when such approval, consent or satisfaction was required shall be taken to operate as a waiver of the necessity for such approval or satisfaction wherever required by this Covenant;
 - (c) such approval or consent may be given on terms and conditions, and security may be required to be posted in an amount and form satisfactory to the Town to ensure compliance with the terms and conditions of any approval or consent given; and
 - (d) the discretion of the Town shall be contractual only, and shall not be subject to public law duties, and the principles of procedural fairness and the rules of the natural justice shall have no application.
11. **No Derogation** – Nothing contained or implied herein shall impair, limit or affect the Town’s rights and powers in the exercise of its functions pursuant to the *Community Charter*, the *Local Government Act*, or any other enactment, and all such powers and rights may be fully exercised in relation to the Land as if this Covenant had not been granted by the Owner.
12. **Priority** – The Owner shall after execution hereof by it do or cause to be done all acts necessary to grant priority to this Covenant over all charges and encumbrances which may have been registered or have pending registration against title to the Land in the Land Title Office save and except those as have been approved by the Town or which have been granted to the Town.
13. **Further Acts** – The Owner shall do and cause to be done all things and shall execute and cause to be executed all documents and other instruments which may be necessary to give proper effect to the intention of this Covenant.

14. **Indemnity** – The Owner covenants to and does hereby indemnify and save harmless the Town, its elected officials, officers, employees, contractors and agents (the “Town Representatives”) at all times from all losses, damages, actions, suits, claims, demands, costs, expenses, fines and liabilities of any nature whatsoever by whomsoever brought, made or suffered for which the Town or any of the Town Representatives shall or may become liable, incur or suffer by reason of any injury to person (including death) or loss or damage to property or consequential or economic loss:

(a) arising directly or indirectly from a breach or non-performance of this Covenant by the Owner, whether directly or through its directors, officers, employees, agents, contractors, licensees, invitees or others of the Owner;

(b) arising directly or indirectly from the exercise or purported exercise by the Owner of any rights to build on and use the Land pursuant to this Covenant or in the fulfilling of its obligations pursuant to this Covenant; and

(c) arising directly or indirectly from any intentional act, or from any omission, default or negligence of the Owner, its directors, officers, employees, agents, contractors, or invitees in the building on or use of the Land,

unless caused by the negligence or deliberate wrongful acts of the Town or those for whom the Town is responsible at law.

15. **Performance at Cost of Owner** – The Owner shall comply with all obligations pursuant to this Covenant at its sole cost and expense.

16. **Entire Agreement** – This Covenant is the entire agreement between the Town and the Owner in respect of its specific subject-matter.

17. **No Representations** – The Town has made no representations, warranties, guarantees, promises, covenants or agreements to or with the Owner in respect of the particular subject-matter of this Covenant other than those expressed in writing in this Covenant.

18. **Amendments** – No amendment to this Covenant is valid unless in writing and executed by the parties.

19. **Interpretation** – In this Covenant:

(a) wherever the singular or masculine is used the same shall be construed as meaning the plural or the feminine or the body corporate or politic where the context or the parties hereto so require;

(b) every reference to a party is deemed to include heirs, executors, administrators, successors, assigns, officers and employees of such parties wherever the context so requires or allows; and

(c) the headings are inserted for reference and convenience only and must not be used to construe or interpret the provisions hereof.

20. **Severance** – Should any article, section, or lesser portion of this Covenant be held invalid or unenforceable by a court of competent jurisdiction, the said portion shall be severed and the invalidity or unenforceability of such article, section or portion shall not affect the validity of the remainder which shall remain binding on the Owner and shall charge the Land and be enforceable to the fullest extent of the law.
21. **Time** – Time is of the essence of this Covenant.
22. **Interest in Land** – This Covenant shall charge the Land pursuant to Section 219 of the *Land Title Act* and the burden of all the covenants herein shall run with the Land and charge the Land and every part into which the Land may be divided or subdivided, including the Guest Rooms.
23. **Enurement** – This Covenant shall enure to the benefit of and be binding upon the parties hereto and their corporate successors and successors in title.
24. **Notice** – Any notice which may be given pursuant to this Covenant must be in writing and either delivered by hand and addressed to the applicable party at its address set out above, or to such other address as the party may specify by notice in writing to the other in accordance with this section, except in the case of a change of ownership in the Land, in which case the Town may deliver notices to such address as may be shown for the Owner on a recent title search for the Land. A notice will be deemed to be given on the day of delivery. All notices to the Town must be addressed to the attention of the Town's Corporate Officer.
25. **Waiver** – Waiver of any default by a party shall not be interpreted or deemed to be a waiver of any subsequent default. All waivers must be in writing.
26. **Compliance with Laws** – The Owner shall carry on and conduct its activities on the Land and pursuant to this Covenant in compliance with any and all applicable statutes, enactments, bylaws, regulations and orders from time to time in force and obtain and maintain all required approvals, permits and licenses thereunder and not to do or omit to do anything in contravention thereof.

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

Schedule "A"
Development Plans

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[Insert Consent and Priority Agreement, if necessary]

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