

THE CORPORATION OF THE DISTRICT OF PEACHLAND

BYLAW NUMBER 1999, 2011

A Bylaw to Authorize a Phased Development Agreement

WHEREAS Section 905.1 of the *Local Government Act* authorizes Council, by bylaw to enter into a phased development agreement with a developer;

NOW THEREFORE the Council of the District of Peachland, in open meeting, enacts as follows:

1. THAT the Mayor and Corporate Officer may execute and deliver an agreement with 0817642 BC Ltd in the form attached as Schedule A of this Bylaw;
- 2.. This Bylaw may be cited as "Phased Development Agreement Authorization Bylaw No.1999, 2011"

READ A FIRST TIME this day of , 2011

READ A SECOND TIME this day of , 2011

PUBLIC HEARING held this _____ day of , 2011.

READ A THIRD TIME this _____ day to , 2011.

FINALLY RECONSIDERED AND ADOPTED this _____ day of _____, 2011

Mayor

Corporate Officer

Dated at Peachland, B.C.
This day of , 2011

SCHEDULE "A" TO BYLAW 1999, 2011

PHASED DEVELOPMENT AGREEMENT

THIS AGREEMENT, made the ____ day of _____, 2011,

BETWEEN:

DISTRICT OF PEACHLAND

5806 Beach Avenue

Peachland, BC V0H 1X7

(hereinafter called the "**District**")

OF THE FIRST PART

AND:

0817642 BC Ltd.

P O Box 49130

2900 -595 Burrard Street

Vancouver, BC V7X 1J5

(hereinafter called the "**Developer**")

OF THE SECOND PART

AND:

WESTBANK FIRST NATION

301- 515 Highway 97 South

Kelowna, BC

V1Z 3J2

(hereinafter called the "**First Nation**")

OF THE THIRD PART

WHEREAS:

- A. The Developer is the registered owner of lands legally described as:
PID: 012-696-544, Block 34, District Lot 490, ODYD, Plan 125
PID: 012-696-561, Block 35, District Lot 490, ODYD, Plan 125
PID: 012-696-684, Block 38, District Lot 490, ODYD, Plan 125 except Plan H750

PID: 005-551-111, District Lot 902, ODYD, except Plans B5979, 26312, 35106, 37658 and H783

PID: 016-214-595, Lot 1, District Lots 220, 902 and 2897, ODYD, Plan 43335

PD: 011-737-808, District Lot 1800, ODYD except South 10 Chains, and Plans 20595, 21887, 24539, 41361 and KAP58324

(collectively the “**Developer’s Lands**”)

And the First Nation is the registered owner of lands legally described as:

PID: 028-583-906 Block C District Lots 2897, 5351 and 5352 ODYD,

(the “**First Nation’s Lands**”)

And, the Developer’s Lands and the First Nations Lands are referred to collectively herein as the “Lands”;

B. The Developer has made an application to the District to rezone the Lands in accordance with the District of Peachland Zoning Amendment Bylaw No. 1924, 2010, the (“**Zoning Amendment Bylaw**”), and The Ponderosa/Pincushion Ridge Area Sector Plan that forms a part of the Official Community Plan as amended by District of Peachland Official Community Plan Amendment Bylaw No. 1891, 2009 (the “**OCP Amendment Bylaw**”);

C. The Developer has paid to the District concurrently with the execution and delivery of this Agreement \$470,000 to be used by the District in its sole discretion for the provision of public amenities within the District, and has undertaken to provide certain additional amenities in conjunction with the development of the Lands, and the parties wish to ensure that the provisions of the Zoning Amendment Bylaw continue to apply to the Lands for the period more particularly set out in this Agreement, that the Lands are developed as specified herein, and that the amenities are provided in conjunction with the development of the Lands in accordance with the Phasing as provided for in this Agreement and Schedule E attached hereto;

D. The Developer has petitioned the District to establish a local area service under s.212 of the *Community Charter* for the maintenance of the trail head park that the Developer is obliged to dedicate to the District or in respect of which the Developer is obliged to grant to the District a statutory right of way under the terms of this Agreement;

E. Council of the District has, by bylaw, authorized the execution of this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual promises exchanged herein, the parties agree pursuant to Section 905.1 of the *Local Government Act*, as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement:

“Affordable Housing Units” means residential units on the Lands that are subject to a housing agreement, in the form attached hereto as Schedule “A”, as contemplated under s.905 of the *Local Government Act*.

“Approving Officer” means the approving officer appointed by the council of the District of Peachland.

“Concept Plan” means the project concept for Ponderosa/Pincushion Ridge prepared by Aplin & Martin Consultants Ltd. and the related phasing plan, copies of which are attached to this Agreement as Schedule “E”.

“Development” means the development of the Lands contemplated by the Concept Plan, OCP Amendment Bylaw and the Zoning Amendment Bylaw, and in particular and subject to section 16.1:

- a) a village centre containing a maximum of 5,000 square metres of commercial and retail space, tourist accommodation, a village plaza, outdoor ice rink and amphitheatre and up to 1050 residential units;
- b) a vineyard/winery including up to 70 residential units;
- c) an alpine development including up to 120 residential units;
- d) multiple family residential development including up to 700 residential units;
- e) single family residential development including up to 100 residential units;
- f) a golf course and club house, including up to 60 residential units;
- g) parks & trails;
- h) restaurant, spa and other uses commonly associated with a hotel or other recreational development developed, and accessory parking, buildings and structures; and
- i) Affordable Housing Units at the rate of 1 such unit for every other 10 residential units constructed on the Lands.

“Development Area” means any of Development Areas 1 through 6 depicted on the Zoning Map and Development Areas Plan for the Pincushion Village Plan prepared by New Town Architecture Inc., a copy of which is attached to this Agreement as Schedule “D”, and in the District’s zoning bylaw as amended by the Zoning Amendment Bylaw.

“Force Majeure” means any event or contingency beyond the reasonable control of the Developer, including without limitation a delay caused by weather conditions, power failure, fire or other casualty, civil commotion, insurrection, sabotage, invasion, rebellion, military or usurped power, war or war-like operations and acts of God, but excluding a delay caused by lack of funds.

“Parcel” means any lot, block or other area in which land is held or into which it is subdivided.

“Special Needs Occupants” means persons having special housing needs of a physical nature as identified by the District in its sole discretion, in view of the District’s assessment of special housing needs in the District at the time the housing for such persons is being constructed, including without limitation persons requiring housing constructed in accordance with Article 9.5 2 of the B C Building Code.

“Specified Zoning Bylaw Provisions” means the provisions of the CD-7 zone added to District Zoning Bylaw No 1375, 1996 in respect of the Lands by the Zoning Amendment Bylaw.

“Trail Network” means the trail network depicted on the park and trail plan for the Ponderosa project prepared by New Town Architecture Inc., a copy of which is attached to this Agreement as Schedule “F”, and for clarity, includes the linear park west and north of Village Road depicted on Schedule “F” having an area of at least 1.785 hectares, and the 0.87 hectare area of the Lands shown as a trail head park on Schedule “F”.

1.2 The headings and captions in this Agreement are for convenience only and do not form a part of this Agreement and will not be used to interpret, define or limit the scope, extent or intent of this Agreement or any of its provisions.

1.3 The word “including” when following any general term or statement is not to be construed as limiting the general term or statement to the specific items or matters set forth or to similar terms or matters but rather as permitting it to refer to other items or matters that could reasonably fall within its scope.

1.4 A reference to currency means Canadian currency.

1.5 A reference to a statute includes every regulation made pursuant thereto, all amendments to the statute or to any such regulation in force from time to time, and any statute or regulation that supplements or supersedes such statute or any such regulation.

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

1.7 A reference to time or date is to the local time or date in Peachland, British Columbia.

1.8 A word importing the masculine gender includes the feminine or neuter, and a word importing the singular includes the plural and vice versa.

1.9 A reference to approval, authorization, consent, designation, waiver or notice means written approval, authorization, consent, designation, waiver or notice.

1.10 A reference to a section means a section of this Agreement, unless a specific reference is provided to a statute.

2. SCHEDULES

2.1 The following Schedules are attached to and form part of this Agreement:

- Schedule "A"- Housing Agreement
- Schedule "B"- Form of SRW for Trails
- Schedule "C"- Sustainable Development Features
- Schedule "D"- Zoning Map and Development Areas
- Schedule "E"- Concept Plan and Project Phasing Plan
- Schedule "F"- Park and Trail Plan
- Schedule "G"- Assignment and Assumption Agreement
- Schedule "H"- Traffic Safety Study Terms of Reference

3. APPLICATION OF AGREEMENT

3.1 This Agreement applies to the Lands and to no other land.

4. SPECIFIED ZONING BYLAW PROVISIONS

4.1 For the term of this Agreement, any amendment or repeal of the Specified Zoning Bylaw provisions to which the Developer has not consented shall not apply to the Lands, subject to:

- a) the express limits set out at Section 905.1 of the *Local Government Act*; and
- b) the termination of this Agreement under Part 6.

5. TERM OF AGREEMENT

5.1 The term of this Agreement is 10 years from the date it is fully executed by the parties.

5.2 Subject to the requirements of the *Local Government Act* in relation to Phased Development Agreements, including the approval of the Inspector of Municipalities being obtained pursuant to Section 905.2(2) of the *Local Government Act*, this Agreement may be extended by mutual consent of the District and the Developer for up to two renewal terms of five years each provided that:

- a) the Developer is not in default of any of its obligations under this Agreement at the time of such extension;
- b) the District and the Developer agree in writing to an extension of this Agreement prior to the end of the Term, or renewal term as the case may be; and
- c) in no event shall the Term of this Agreement including all renewal terms be for a period of more than 20 years.

6. TERMINATION

6.1 The parties may terminate this Agreement at any time by written agreement.

6.2 If the Developer does not comply with any of the provisions of this Agreement, the District may at its option terminate this Agreement before the expiry of the Term by providing notice in writing to the Developer, provided that:

- a) in the case of a failure on the Developer's part to pay a sum of money or to provide security for an obligation, the District has, at least 30 days prior to giving such notice, advised the Developer in writing of the alleged failure to pay or to provide the security (the "**Default Notice**") and the Developer has not corrected the failure to the reasonable satisfaction of the District within that 30 day period;
- b) in the case of any other default on the Developer's part to comply with any of its obligations under this Agreement, the District has, at least 60 days prior to giving such notice, provided the Developer with a Default Notice in respect of such default, and the Developer has not corrected the default to the reasonable satisfaction of the District, within that 60 day period; or
- c) if a default (but for certainty, not including a failure to pay a sum of money or provide security as referred to in section 6.2(a)) reasonably requires longer than 60 days to remedy given the nature of the default, the Developer has failed to substantially commence remedying such default within 30 days after receipt of the Default Notice to the reasonable satisfaction of the District or, having commenced remedying such default within that 30 day period, has failed to diligently pursue remedying the default thereafter or failed to remedy to default within such period of time as may be reasonably required given the nature of the default.

7. LAND FOR PUBLIC PURPOSES

7.1 In accordance with section 941 of the *Local Government Act*, but subject to this Section 7, the Developer covenants and agrees to dedicate on subdivision on the Lands, if not already provided otherwise, land for perpetual public use and access to the extent of at least 5% of the area of the Lands, or cash in lieu determined in accordance with Section 941 of the *Local Government Act* and the Subdivision Parkland Valuation Regulation B.C. Reg. 20/86, and for that purpose the parties agree that the area of the land to be dedicated shall consist only of such portions of the Lands as the District determines in its sole discretion are not so steeply sloped as to be undevelopable for public use and access purposes. The parties agree that the funds referred to in Recital C to this Agreement are paid in advance in lieu of providing 1.19 hectares of land under this Part, but only in respect of dedications required under this section in excess of the Trail Network dedication requirements for which the Developer has the option under section 941 of the *Local Government Act* as to whether to provide parkland or a payment in lieu thereof.

7.2 In particular, with respect to every subdivision of the Lands and every issuance of a development permit for any building on the Lands, the Developer covenants and agrees to dedicate the Trail Network from the Parcel of the Lands being subdivided, or from the Parcel of Lands that are the subject of the development permit for any building. Such areas shall be taken into account in determining compliance with the Developer's obligation under section 7.1 to dedicate at least 5% of the Lands being subdivided, and the Developer shall not have the option (if it is, in fact, the Developer's option under section 941 of the *Local Government Act*) of providing cash in lieu of dedicating such lands, nor shall the Developer be entitled to apply the 1.19 hectare 'credit' against the Trail Network dedication obligations.

7.3 The Developer covenants and agrees that each dedication required under section 7.2 will, with respect to any part of the Trail Network lands, take place prior to or concurrently with either the first subdivision of the Lands containing those Trail Network lands to be dedicated, or the issuance of the first development permit for a building on the Lands containing the Trail Network lands to be dedicated, whichever comes first

7.4 In the event that the District determines in its sole discretion that any area of land required or proposed to be dedicated under section 7.1 or 7.2 should instead be made the subject of a perpetual grant of statutory right of way for park and public access purposes, the Developer shall, as satisfaction of a parkland dedication requirement in section 7.1 or 7.2, grant to the District and register, at its sole cost, a Statutory Right of Way pursuant to Section 218 of the *Land Title Act* in the form attached as Schedule "B" to this Agreement concurrently with the deposit of the subdivision plan and shall designate such areas as common property if the subdivision plan is a strata plan.

7.5 The Developer shall at its sole cost prepare all plans, transfer forms and other documents necessary to give effect to the transfers required to be made under this section 7.

7.6 Prior to the issuance of an occupancy permit for any building in Phase 2 and before issuance of any building permits for any subsequent Phases, the Developer covenants and agrees to transfer to the District for \$1.00 fee simple title to 0.13 hectares of the Lands within a Development Area suitable, to the District's reasonable satisfaction, for a future satellite fire equipment storage facility in close proximity to the golf course maintenance facility, if required by the District. Such transfer will be free and clear of all financial liens, charges and encumbrances (including any options to purchase, rights of first refusal and leases) and any other charges or encumbrances that might affect the District's use of such land.

7.7 The Developer shall satisfy all legal requirements and conditions necessary to effect the transfers required under this Part, and shall obtain all necessary approvals required for any subdivision of the Lands necessary to effect those transfers, all at the Developer's sole cost.

8. DEVELOPMENT OF OTHER PUBLIC AMENITIES

8.1 The Developer covenants and agrees to fully develop and then provide for perpetual public use (by way of dedication or statutory right of way) the following amenities, generally in locations identified on Schedule "F" and concurrently with the development of Development Area 1:

- a) an Amphitheatre with capacity for at least 300 persons seated on landscape seating; and
- b) a Village Plaza with an area of at least 0.34 hectares.

9. DEVELOPMENT OF TRAILS

9.1 The Developer covenants and agrees that all portions of the Trail Network shall have an average width of three metres and be constructed to a standard consistent with neighbouring portions of the existing trails and to the satisfaction of the District.

9.2 Prior to the issuance of any development permit for any building on the Lands, or the approval of any subdivision of any of the Lands, whichever is earlier, the Developer will, with respect to that portion of the Trail Network that is within the Development Area or Areas containing any of the Lands that is subject to the development permit for any building or within any parcel of the Lands being subdivided:

- a) provide an engineering plan for the construction of the Trail Network to the satisfaction of the District; and
- b) provide security in the form of cash or an irrevocable and unconditional letter of credit in an amount that is to the reasonable satisfaction of the District and in a form, and issued by a financial institution satisfactory to the District, as security for the Developer's obligations to construct the Trail Network under this Agreement, which security may be returned or released proportionally to the Developer as portions of the Trail Network are completed or may be used by the District to construct the Trail Network if the Developer fails to do so in accordance with this Agreement within one year following approval of the subdivision or issuance of the development permit for any building in respect of which the construction obligation arose.

9.3 If the Developer completes the construction of a discrete portion of the Trail Network to the satisfaction of the District, acting reasonably, or if the District completes a discreet portion of the Trail network under section 9.5 for which the Developer has reimbursed the District, the District will return or release 95% of the security applicable to that portion of the Trail Network and may retain and use the remaining 5% with respect to defects or deficiencies in construction and landscaping identified during the 12 month period after release of the 95% and the District will return or release any unused portions to the Developer following the later of 12 months after release of the 95% and the correction of all such defects or deficiencies to the reasonable satisfaction of the District.

9.4 The Developer covenants and agrees that where an area of the Lands being developed or subdivided is not adjacent to an area which has already been developed or subdivided, such that there would be a gap of up to 100 metres in the Trail Network once the additional Trail Network is constructed as a requirement of the area of the Lands being developed or subdivided, the Developer will provide a temporary connection between the existing trail and such additional Trail Network, at its sole cost, until such time that the missing portion of the Trail Network is

constructed. The temporary trail need not be constructed to the standards required in this section 9 but must be safe for public use, as determined by the District. Where the temporary trail has not been secured by dedication or statutory right of way, the Developer will grant a License of Use and Occupation with substantially the same terms as the statutory right of way in Schedule "B" to secure public access to and use of the temporary trail.

9.5 The Developer acknowledges that the District may elect, at any time and at its own initial expense, to design, develop and construct portions of the Trail Network to provide connections (except where there are existing trails providing such connections) between developed portions of the Trail Network to the same standards required in this section 9 and in the general locations shown on Schedule F, (subject always to the District and the Developer agreeing to a relocation of any trail shown on that Schedule F) and in that event the Developer shall, upon being notified by the District, dedicate the applicable portion of the Trail Network or, at the District's option, grant a statutory right of way in the same manner as if the Developer were then required to dedicate such portion of the Trail Network under this Agreement. The Developer will reimburse the District for its reasonable expenses in constructing that portion of the Trail Network providing connections, prior to the issuance of any development permit for any building on the Lands or the approval of any subdivision of any of the Lands, whichever is earlier, within the Parcel that previously contained that portion of the Trail Network.

10. CONSERVATION COVENANTS

10.1 The Developer covenants and agrees to grant to the District a covenant pursuant to Section 219 of the *Land Title Act*, in respect of any area of the Lands determined by the District, acting reasonably, to be environmentally sensitive to development, which covenant shall prohibit the owner of the land from removing or disturbing any soil, vegetation (with the exception of weeds), or trees within, and constructing any building, structure or improvement on, the land without first obtaining consent of the District's Director of Planning and Development Services. The Developer agrees that such covenant shall be in a form determined by the District, acting reasonably and shall be granted to the District prior to the issuance of any development permit in respect of a parcel the Lands in which or adjacent to which the environmentally sensitive area is located, and that the District may determine an area of the Lands to be environmentally sensitive whether or not a development permit area has been designated for that purpose and whether or not any District guideline requires the protection of the area. The Developer acknowledges that no such covenanted areas shall be taken into account in calculating the Developer's obligations to provide land for public purposes under sections 7.1adn 7.2. In the event that the Lands containing such an environmentally sensitive area are subdivided by deposit of a strata plan under the *Strata Property Act*, the Developer shall designate the area as common property on the strata plan.

11. SUSTAINABLE DEVELOPMENT FEATURES

The Developer will ensure that Green Building Standards will be applied where practical and that energy, water, liquid and solid waste conservation alternatives will be implemented whenever possible and with reference to the sustainable development features set out in Schedule "C".

12. AFFORDABLE HOUSING UNITS

12.1 The Developer covenants and agrees to provide Affordable Housing Units subject to this Section 12:

- a) the Affordable Housing Units shall be constructed by or on behalf of the Developer on the Lands, at the rate of one Affordable Housing Unit for every ten residential dwelling units built on the Lands that are not Affordable Housing Units, (that is, based on 10% of the total number of residential dwelling units built on the Lands less the number of Affordable Housing Units already built);
- b) the Developer shall construct an Affordable Housing Unit prior to or concurrently with the construction of the residential dwelling units that trigger the requirement in section 12.1 (a) for the applicable Affordable Housing Unit and the Developer:
 - i) shall complete the construction of the Affordable Housing Unit so as to enable issuance of an occupancy permit for the Affordable Housing Unit prior to or concurrently with the issuance of any occupancy permits in respect of the construction of the residential dwelling units that trigger the requirement in section 12.1(a);
- c) the Developer shall at the time of obtaining a building permit for an Affordable Housing Unit required by this Agreement, and subject to section 12.3, identify the unit as an Affordable Housing Unit on the building permit plans and execute and deliver to the District a housing agreement pertaining to that Affordable Housing Unit in accordance with the form of housing agreement attached hereto as Schedule A; and,
- d) the unit mix of the Affordable Housing Units constructed shall, at the end of each Phase be approximately:
 - i) 30% approximately 50 square metres in floor area designed for single occupancy;
 - ii) 30% with floor areas between 56 and 80 square metres designed for double occupancy;
 - iii) 10% approximately 93 square metres in floor area designed for Special Needs Occupants; and
 - iv) 30% approximately 93 square metres in floor area designed for family occupancy.

12.2 Notwithstanding section 12.1, the Lands may be developed with a maximum of 200 residential units without the prior or concurrent provision of Affordable Housing Units. After completing 200 residential units on the Lands, no further construction of residential units shall be permitted on the Lands without the prior development and completion, including issuance of occupancy permits, of 20 Affordable Housing Units.

12.3 The Developer must comply with section 12.1(a) by providing the requisite number of Affordable Housing Units for a Phase as indicated on the Project Phasing Plan in Schedule "E", prior to the construction of any building or structure in any subsequent phase.

13. FINANCIAL CONTRIBUTIONS

13.1 The Developer covenants and agrees that it will make a cash contribution to the District, to be placed by the District in an amenity reserve fund established by the District for the general purpose of upgrading community facilities, in the amount of \$1,350 per dwelling unit to be paid by the Developer at the time of issuance of each building permit based on the number of dwelling units contemplated to be built under the permit and at the time of approval of any subdivision of the Lands based on the number of parcels on which only one dwelling unit may be constructed pursuant to the Specified Zoning Bylaw Provisions. For clarity, where a contribution has been made in respect of a parcel created by a subdivision of the Lands, no further contribution will be required in connection with the construction of a dwelling unit on that parcel. Contributions are not required under this section in respect of Affordable Housing Units.

13.2 The Developer covenants and agrees that it will make a cash contribution to the District in the amount of \$250 per dwelling unit to a cumulative maximum of \$577,500 at the times specified in the preceding section, which the District will use for the purchase and storage of firefighting equipment. If the Developer applies for a building permit authorizing construction on the Lands of any building higher than four storeys, the Developer shall, instead, pay to the District the cumulative maximum amount specified in this section less any amounts already paid under this section or, if the District's Director of Planning and Development Services approves, separate the proposed building structures into fire protection units (in accordance with the B.C. Building Code) that do not exceed four storeys. Contributions are not required under this section in respect of Affordable Housing Units.

14. STREETScape IMPROVEMENTS

14.1 Prior to the issuance of a building permit for any building on the Lands, the Developer covenants and agrees to:

- a) provide an engineering plan for all streetscape improvements to the reasonable satisfaction of the District; and
- b) enter into a servicing agreement with the District, in the District's standard form, respecting the construction of all streetscape improvements on or abutting the portion of the Lands being developed.

15. SITE SERVICING & INFRASTRUCTURE

15.1 The Developer acknowledges that previous District infrastructure plans did not anticipate in all respects the type or density of development being proposed on the Lands. The Developer covenants and agrees that the District may commission an Infrastructure Review at the sole cost of the Developer to determine whether the District's existing infrastructure can, along with the

anticipated demand for infrastructure capacity in respect of land other than the Lands, accommodate the Development. The Developer will pay the District's costs of the Infrastructure Review within 30 days of receipt of an invoice from the District. The Developer covenants and agrees that if the Infrastructure Review determines that the existing infrastructure cannot accommodate the Development, the District may withhold any approvals or permits (including subdivision, building permit, development permit, occupancy permit) for any uses, buildings or structures which cannot be adequately serviced by existing infrastructure, notwithstanding the uses and density permitted in the Zoning Amendment Bylaw, until the relevant infrastructure deficiency is rectified to the District's satisfaction; but nothing shall prevent the Developer from petitioning to have any such infrastructure financed as a local area service; and, if the Developer pays the costs of upgrading any such infrastructure to rectify such an infrastructure deficiency, nothing shall require the Developer to waive the rights to any latecomer agreement with respect thereto.

15.2 In order to service the Lands for the Development, the Developer agrees to construct, incrementally, the major trunk lines for water and sewer and drainage works within and immediately adjacent to each Parcel in a Development Area created for building development by subdivision of the Lands, prior to or as a condition of that subdivision, and the Developer further agrees to construct the reservoirs and any part of the principal access road to Highway 97 where required under this Agreement to be included in a particular Phase or Development Area or to serve a proposed building development parcel in that subdivision, all to the District's satisfaction, acting reasonably.

16. DEVELOPMENT PHASING

16.1 The Developer agrees that the number of residential dwelling units in each of the Development Areas shall not exceed the following, exclusive of Affordable Housing Units, provided that the specified number for any Development Area may be exceeded as long as the specified number for one or more of the other Development Areas is reduced by an equivalent number of units:

- Development Area 1-1050
- Development Area 2-70
- Development Area 3-120
- Development Area 4-700
- Development Area 5-100
- Development Area 6-60

16.2 The parties acknowledge that Schedule "E" is general and conceptual only, having been prepared without a determination as to whether the precise road alignment best suits the contours of the Lands. Building locations and configurations have been shown on Schedule "B" to provide an indication as to probable site coverage and location and not to establish the siting and location of buildings. The Developer covenants and agrees that, notwithstanding any other statutory requirements or District bylaws or regulations and whether or not required by law, the Developer will not apply for a development permit or building permit for any development of any portion of the Lands, until the Developer has with respect to that portion of the Lands then proposed to be developed:

- a) prepared a detailed plan for that portion of the Lands, in sufficient detail to meet the District's requirements for submission of a development permit application, and such plan shall identify any environmentally sensitive areas for the purposes of assisting the District in identifying areas of protection by covenant under section 10 of this Agreement and any riparian conservation areas identified in the riparian area improvement plan prepared under section 18;
- b) consulted with the public on the detailed plan, including residents of the District, by hosting at least one public information meeting in the District, unless the proposed development is a residential development of 20 units or less;
- c) provided the detailed plan and a report of the consultation, including a copy of any written comments received, a summary of verbal comments and any changes to the plan resulting from the consultation, to the District's Director of Planning and Development Services; and
- d) entered into a binding agreement with the District to construct the transportation improvements recommended in the Draft Report on the Ponderosa-Pincushion Ridge Traffic Impact Study prepared by Opus International Consultants (Canada) Ltd. and dated June 4, 2010, which recommendations are attached to this Agreement as Schedule "H", at the Developer's cost, or such alternative or additional transportation improvements recommended in any final or subsequent report that have been agreed to by the Developer and approved by the District or other authority having jurisdiction.

16.3 The Developer must ensure that the Village Centre site shown on Schedule "E" is completed to the extent that the Village Square, the Village fronting promenade trail and the road connecting Somerset road with Ponderosa road are completed and in service by or before the issuance of an occupancy permit in respect of any building in Phase 1 a or Phase 2.

16.4 Except as expressly provided in this Agreement, nothing in this Agreement shall relieve the Developer from any obligation or requirement arising under any applicable statute, bylaws or regulation in respect of the subdivision and development of the Lands, and without limiting the generality of the foregoing, the Developer shall remain fully responsible to ensure that the development of the Lands is in full compliance with all requirements of the bylaws of the District respecting land development, zoning, subdivision and building construction.

16.5 The Developer acknowledges that the Approving Officer is an independent statutory officer, and that nothing in this Agreement shall be interpreted as prejudicing or affecting the duties and powers of the Approving Officer in respect of any application to subdivide the Lands.

17. DEVELOPMENT PERMITS

17.1 The Developer agrees that notwithstanding that the Developer may be otherwise entitled to a development permit under the *Local Government Act* and the District's bylaws, the District is not obligated to issue any such permit in respect of the Lands, until the Developer has provided the District with the development approval information required in accordance with the

procedures and policies duly established by the District in accordance with Sections 920.01 and 920.1 of the *Local Government Act* or subsequent statutory provisions dealing with the same material, respecting portions of the Lands proposed to be developed in accordance with such procedures and policies, which may include but not be limited to the provision of:

- a) a landscape plan which identifies natural areas to be retained and areas where new landscaping will be provided;
- b) a plan identifying the general form and character of all buildings and structures, including building materials;
- c) an archaeological assessment report, in respect of any portion of the Lands proposed to be disturbed which the District reasonably considers may contain any artifacts or remains;
- d) a geotechnical and hydro-geological report;
- e) a detailed rock fall hazard and landslip analysis;
- f) a view analysis assessing whether the development proposed will be consistent with OCP policies respecting protection of the natural terrain and the ridgeline viewscapes;
- g) a wildfire hazard assessment and remediation plan; and
- h) a grey water management plan.

17.2 In addition to the requirements that may be imposed by the District as a condition of the issuance of a development permit, the Developer covenants and agrees that concurrently with the submission of any development permit, the Developer shall at its sole cost provide the District with a detailed Environmental Impact Assessment report (a “**Detailed EIA**”) prepared by a person having professional qualifications satisfactory to the District, acting reasonably, analyzing and commenting on the activities proposed under the development permit, if in the opinion of the District, acting reasonably, the environmental assessments of the Pincushion/Ponderosa prepared by (a) Summit Environmental Consultants Ltd. November 7, 2006 (the “**General EIA**”) and (b) Enkon Environmental Ltd. dated April 2010 (Wildlife Habitat and Environmentally Sensitive Areas Assessment) are insufficient to inform the specification of environmentally sensitive areas within the parcels of the Lands that are the subject of the development permit application.

17.3 Without limiting the jurisdiction of the District to impose conditions on any proposed development of the Lands or the Development pursuant to Section 920 of the *Local Government Act*, the District may require the Developer to take any measures or steps that are reasonably required, in the development of the Lands, in order to fulfill the conditions and recommendations of the General EIA or any Detailed EIA, and the Developer agrees to comply with any and all such conditions.

18. CONSERVATION AREA IMPROVEMENTS AND MAINTENANCE

18.1 Prior to the issuance of a development permit in respect of any portion of the Lands, the Developer must provide the District with a riparian area improvement plan prepared by a Qualified Environmental Professional in accordance with the Assessment Methods, each as defined in the Riparian Areas Regulation under the *Fish Protection Act*, identifying all riparian areas on the Lands and recommending improvements to restore and enhance the productivity of the riparian areas as fish habitat, together with a detailed planting list and schedule of quantities and prices for the work certified by the Qualified Environmental Professional and recommendations as to the ongoing maintenance of the areas. The plan must be in a sufficiently detailed form to obtain all regulatory approvals required for the riparian area enhancement work, including but not limited to:

- a) any permit required by the *Local Government Act* or any bylaw of the District; and
- b) permits and approvals from the Ministry of Environment (British Columbia) (the "MOE"), or Fisheries and Oceans Canada (the "DFO").

18.2 Without limiting section 18.1, the riparian area improvement plan must be to the satisfaction of the District, and upon the issuance of any development permit authorizing the alteration of any portion of the Lands containing lands which the plan has identified as a riparian area to be protected or improved, the Developer must provide to the District security in the form of an irrevocable letter of credit, in a form satisfactory to the District, and in the amount of one 120% of the estimated cost of completing the riparian area improvement work, as certified by the Qualified Environmental Professional.

18.3 Upon the issuance of a development permit authorizing the alteration of any portion of the Lands containing land which the riparian area improvement plan has identified as a riparian area to be protected or improved, and upon the receipt of all necessary permits or approvals from MOE and DFO, the Developer shall undertake the riparian area improvement work recommended in the plan and shall complete that work to the District's satisfaction within 12 months of the applicable development permit being issued. The Developer shall complete the riparian area improvement work at its sole cost, and in full compliance with the terms and conditions of all such MOE and DFO permits and approvals. In the event the Developer fails to complete the riparian area improvement work within the time required under this section 18.3, the District may draw upon the letter of credit provided under section 18.2 and may complete that work at the Developer's sole cost. In the event that the Developer has with all due diligence pursued the completion of the riparian area improvement work throughout the 12 month period and is prevented from completing that work within the time required due to an event of Force Majeure, the Developer may request that the District consent to an extension of time of up to 6 months for completion of that work, such consent not to be unreasonably withheld.

Ongoing Maintenance of Conservation Areas

18.4 The parties acknowledge that some provision is to be made for the ongoing maintenance of riparian areas in accordance with the recommendations of the Qualified Environmental

Professional, except to the extent that such areas have been dedicated to the District as park land under section 7.1. In the event that any portion of the Lands containing such a riparian area is subdivided by deposit of a strata plan under the *Strata Property Act*, the Developer shall designate the area as common property on the strata plan.

19. SERVICING FOR THE DEVELOPMENT

19.1 The Developer acknowledges that the District is not obliged, to provide or upgrade any servicing to the Lands, including any or all of the following services to the Lands.

- a) water for domestic purposes, irrigation or firefighting;
- b) sanitary sewer collection or treatment;
- c) stormwater management;
- d) fire protection;
- e) roads; or
- f) public or private parkland improvements or upgrades.

19.2 The Developer covenants that it shall not subdivide the Lands or construct any buildings, improvements or structures on a parcel of the Lands, other than the riparian area improvements and enhancements required under section 18 of this Agreement, and structures such as roads, pipes, mains, pumps, and all related facilities and equipment as may be necessary to provide water, sanitary sewer and fire suppression services to the Lands, until the above services in this section 19 have been provided or upgraded (or in the case of parkland improvements until provided or ungraded or until security therefore has been provided to the District) in respect of the parcel of the Lands proposed to be developed or subdivided, as the case may be.

19.3 The Developer will provide services in accordance with the District's Subdivision and Development Services Bylaw No. 1956, as amended from time to time.

Water

19.4 The Developer covenants and agrees to fund a review by the District to be conducted within the first six months of the term of this Agreement, in order to determine the long-term availability of water to service the Lands, and all potential development in the District as outlined in the District's Official Community Plan and Water Master Plan. The District's consultant is to provide an estimate of fees prior to commencing the review for approval by the Developer and the Developer shall provide the required funds in advance.

19.5 The Developer acknowledges that a separate source of water to irrigate the proposed golf course may be required, which shall be constructed and operated at the sole cost of the Developer.

19.6 The Developer must at its sole cost construct all on-site services and off-site services necessary for the supply and distribution of water to and within each parcel proposed to be developed for domestic and firefighting purposes, such services to be of a size to facilitate the servicing of other parts of the Development.

19.7 The District agrees to provide information within its possession that may assist the Developer to access water to irrigate the proposed golf course.

Sanitary Sewer Collection and Treatment

19.8 The Developer covenants and agrees that sanitary sewer collection and treatment services for each parcel proposed to be developed shall be provided in accordance with the following provisions:

- a) the Developer must at its sole cost construct all on-site services and off-site services necessary for the collection of sanitary sewage from the parcel proposed to be developed. All sewage treatment systems must be compliant with the Liquid Waste Management Plans of the District and the Regional District of Central Okanagan as amended from time to time;
- b) within two years of entering into this Agreement the Developer agrees to fund, at its cost, a comprehensive review by the District to determine the long-term capacity of the Lake Okanagan forcemain, and to assess the impact of the proposed development of the Lands on the forcemain; and
- c) the Developer acknowledges its obligation to pay Development Cost Charges, with respect to the Regional District of Central Okanagan Regional Wastewater Treatment Plant.

Highways

19.9 The Developer covenants and agrees to provide highway service to the Lands in accordance with the following provisions:

- a) the Developer must at its sole cost construct all on-site and off site highway improvements identified by the Traffic Impact Study referred to in section 16.2, or such alternative or additional improvements as may be recommended in subsequent traffic impact studies prepared in accordance with terms of reference approved by the District, by or before the time specified in the Traffic Impact Study or subsequent studies for the completion of such improvements; and
- b) all highway improvements shall be sized, and designed and constructed, so as to accommodate the potential development of all of the Lands and such lands adjacent to the Lands as are identified in the Traffic Impact Study or subsequent studies as being served by such improvements, and the District acknowledges that any such adjacent lands may be benefiting lands for the purpose of imposing

latecomer charges in respect of highway improvements required by the District under the *Local Government Act*.

Stormwater Management

19.10 The Developer covenants and agrees to provide stormwater management service to and within the Lands in accordance with the following provisions:

- a) the Developer covenants and agrees to fund at its sole cost within the first six months of the term of this Agreement a detailed Stormwater Management Plan to address the needs of the proposed development of all of the Lands, based on terms of reference established by the District. The plan shall determine the upstream catchment areas, downstream impacts, best management practices, slope stability, and on-site and off-site improvements necessary to protect and manage stormwater quality and quantity from the Lands to Lake Okanagan;
- b) the Developer covenants and agrees to design and construct stormwater management works on the Lands during each phase of development of the Lands and downstream of the Lands at its sole cost, so as to minimize the impact of stormwater runoff and impact natural drainage patterns as little as possible, subject to any District bylaw requirements;
- c) all stormwater infrastructure shall be sized, and designed and constructed so as to accommodate the potential development of all of the Lands and such lands adjacent to the Lands as are identified in the Stormwater Management Plan as being served by such improvements, and the District acknowledges that any such adjacent lands may be benefiting lands for the purpose of imposing latecomer charges under the *Local Government Act*.

20. NOTICE ON TITLE

20.1 The Developer acknowledges that the District is required to file a notice on title to the Lands with regard to the existence of this Agreement.

21. ASSIGNMENT OF AGREEMENT

21.1 In addition to the provisions in section 21.2, the Developer may assign this Agreement to a subsequent owner of one or more subdivided parcels derived from the Lands if the District consents in writing to the assignment, and by executing and delivering to the District an assignment and assumption agreement in the form of Schedule "G". To the extent that it may lawfully do so under the provisions of the *Local Government Act*, the District agrees that its consent to an assignment will not be withheld unreasonably. The Developer acknowledges that it is reasonable for the District to withhold consent to an assignment if the Developer has not made arrangements satisfactory to the District for the performance of the Developer's obligations under this Agreement with regard to the subdivided parcel derived from the Lands being transferred to a proposed assignee, including without limitation the payment of any funds to the

District in respect of buildings to be constructed on such subdivided parcel derived from the Lands or Affordable Housing units to be constructed in respect of other dwelling units to be constructed on such subdivided parcel derived from the Lands.

21.2 The Developer may assign this Agreement to an affiliate (as defined in the *Business Corporations Act* (British Columbia)) of the Developer.

21.3 The Developer may assign this Agreement to any other person, with the agreement of the District.

22. ZONING COVENANT

22.1 Concurrently with the execution of this Agreement by the Developer, the Developer will grant to the District, and cause to be registered against title to the Lands in the land title office, a covenant under section 219 of the Land Title Act in a form required by the District, acting reasonably, that prohibits the Lands from being sold or otherwise transferred separately, except where the owner of all of the parcels grants to the District, and causes to be registered against title to the Lands in the Land title office, a further covenant allocating all of development potential under the Specified Zoning Provisions among the parcel to be sold or transferred and the remainder of the Lands, in which case the District will discharge the first covenant from the parcel to be sold or transferred following such sale or transfer.

23. PLANS, REPORTS AND STUDIES

23.1 Where this Agreement requires that the Developer to prepare engineering plans, in order to satisfy the requirement the Developer shall cause detailed drawings and specifications for the work or service to be prepared by and under seal of an appropriately professional engineer having qualifications acceptable to the District, acting reasonably, and to obtain the District's approval, acting reasonably, of such drawings and specifications. Where this Agreement requires the Developer to provide a study, plan, report or similar thing to the District, the Developer shall be required to cause the report to be prepared by a professional engineer or other professional person, in either case having qualifications acceptable to the District, acting reasonably.

24. SECURITY

24.1 Where the Developer is required to provide security to the District under this Agreement as security for performance of an obligation by the Developer under this Agreement, if the Developer does not perform such obligation in accordance with this Agreement, the District may without notice to the Developer use such security to perform such obligation and the Developer will, within 30 days of receipt of an invoice, reimburse the District for any costs of performing such obligation to the extent they exceed the amount of security held in respect of such obligation. Where the Developer provides a letter of credit as such security, the letter of credit will be irrevocable and unconditional and will otherwise be on terms satisfactory to the District and the letter of credit shall be provided by a financial institution acceptable to the District and presentable at a location in the District of Peachland.

25. PRIORITY

25.1 Where the Developer is required to grant to the District a covenant under section 219 of the Land Title Act or a statutory right of way under section 218 of the Land Title Act, the Developer will cause such covenant or right of way to be registered against title to the Lands (or applicable portion) in the land title office in priority to all financial liens, charges and encumbrances (including any options to purchase, rights of first refusal and leases) and any other charges and encumbrances that might affect the effectiveness of the covenant or right of way, as determined by the District, acting reasonably.

26. DEVELOPER COST

26.1 For clarity, the Developer shall perform its obligations under this agreement at its sole cost and expense.

27. AMENDMENT OF AGREEMENT

27.1 The parties may in writing agree to minor amendments to this Agreement, and for that purpose a "minor amendment" is a change or amendment to any of the Schedules to this Agreement other than Schedule "G".

28. DISPUTE RESOLUTION

28.1 If a dispute arises between the parties in connection with this Agreement, the parties agree to use the following procedure as a condition precedent to any party pursuing other available remedies:

- a) either party may notify the other by written notice ("**Notice of Dispute**") of the existence of a dispute and a desire to resolve the dispute by mediation;
- b) a meeting will be held promptly between the parties, attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute;
- c) if, within 48 hours after such meeting or such further period as is agreeable to the parties (the "**Negotiation Period**"), the parties have not succeeded in negotiating either party may pursue recourse through the Courts or, if the parties are agreeable, they may submit the dispute to mediation or arbitration in accordance with the rest of this section 29;
- d) if the parties agree to submit a matter to mediation:
 - i) the parties will bear equally the costs of any mediation;
 - ii) the parties will jointly appoint a mutually acceptable mediator (who must be an expert in the subject matter of the dispute), within 48 hours of the conclusion of the Negotiation Period;

- iii) the parties agree to participate in good faith in the mediation and negotiations related thereto for a period of 30 days following appointment of the mediator or for such longer period as the parties may agree;
- iv) if the parties are not successful in resolving the dispute through mediation, either party may pursue recourse through the Courts or, if the parties are agreeable, they may submit the dispute to arbitration in accordance with the rest of this section 29;
- e) if the parties agree to submit a matter to arbitration:
 - i) the dispute will be settled by a single arbitrator in accordance with the *Commercial Arbitration Act* The decision of the arbitrator will be final and binding and will not be subject to appeal on a question of fact, law, or mixed fact and law; and
 - ii) the costs of arbitration will be awarded by the arbitrator in his or her absolute discretion.

29. NOTICE

29.1 Any notice permitted or required by this Agreement to be given to either party must be given to that party at the address set out above, or to any other address provided by a party to the other party from time to time.

30. POWERS PRESERVED

30.1 Except as expressly set out in this Agreement, nothing in this Agreement shall prejudice or affect the rights and powers of the District in the exercise of its powers, duties or functions under the *Community Charter* or the *Local Government Act* or any of its bylaws, all of which may be fully and effectively exercised in relation to the Lands as if this Agreement had not been executed and delivered to the Developer, subject only to Section 905.1 of the *Local Government Act*.

31. DISTRICT'S REPRESENTATIVE

31.1 Any opinion, decision, act or expression of satisfaction or acceptance of the District provided for in this Agreement may be taken or made by the Chief Administrative Officer or his or her designate, unless expressly provided to be taken or made by another official of the District.

32. PERMITS

32.1 The Developer acknowledges that the District may, despite any public law limitations, withhold building permits and occupancy permits to the extent so provided under the terms of this Agreement.

33. CONFLICT

33.1 In the event of a conflict between the terms of this Agreement and the provisions of the District Official Community Plan or Zoning Bylaw applicable to the Lands, the Official Community Plan or Zoning Bylaw will prevail, except insofar as Section 905.1(5) of the *Local Government Act* applies to a bylaw adopted after the date of execution of this Agreement by the District.

34. TIME

34.1 Time is to be the essence of this Agreement.

35. BINDING EFFECT

35.1 This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors, successors, and permitted assignees.

36. WAIVER

36.1 The waiver by a party of any failure on the part of the other party to perform in accordance with any terms or conditions of this Agreement is not to be construed as a waiver of any future or continuing failure, whether similar or dissimilar.

37. CUMULATIVE REMEDIES

37.1 No remedy under this Agreement is to be deemed exclusive but will, where possible, be cumulative with all other remedies at law or in equity.

38. RELATIONSHIP OF PARTIES

38.1 No provision of this Agreement shall be construed to create a partnership or joint venture relationship, an employer-employee relationship, a landlord-tenant, or a principal-agent relationship.

39. AMENDMENT

39.1 This Agreement may not be modified or amended **except** by the written agreement of the parties. The parties acknowledge that any such modification or amendment not constituting a minor amendment under Part 22 of this Agreement may be made only by bylaw following a public hearing.

40. INTEGRATION

40.1 This Agreement contains the entire agreement and understanding of the parties with respect to the matters contemplated by this Agreement and supersedes all prior and contemporaneous agreements between them with respect to such matters.

41. SURVIVAL

41.1 All representations and warranties set forth in this Agreement and all provisions of this Agreement, the full performance of which is not required prior to a termination of this Agreement, shall survive any such termination and be fully enforceable thereafter.

42. NOTICE OF VIOLATIONS

42.1 Each party shall promptly notify the other party of any matter which is likely to continue or give rise to a violation of its obligations under this Agreement.

43. ENTIRE AGREEMENT

43.1 The whole agreement between the parties is set forth in this document and no representations, warranties or conditions, express or implied, have been made other than those expressed.

44. COUNTERPARTS

44.1 This Agreement may be executed in counterparts with the same effect as if both parties had signed the same document. Each counterpart shall be deemed to be an original. All counterparts shall be construed together and shall constitute one and the same Agreement.

45. CONSENT OF THE FIRST NATION

45.1 The First Nation, as the owner of the First Nation's Lands acknowledges that it has leased the First Nation's Lands, as defined herein, to the Developer for the purposes of the Developer constructing portions of the Development, including parts of a proposed golf course.

45.2 The First Nation consents to the Developer entering into this Agreement with respect to the First Nation's Lands as defined herein.

45.3 The First Nation covenants and agrees to require the Developer to be bound by the terms of this Agreement with respect to those portions of the Development on the First Nation's Lands, as defined herein, and to be bound itself by the terms of this Agreement as defined herein, as if the First Nation was the Developer under the terms of this Agreement as it relates to the First Nation's Land.

45.4 The Developer agrees to indemnify and save harmless the First Nations for the Developer's failure to comply with any of the terms of this Agreement as it relates to the First Nation's Lands as defined herein.

IN WITNESS WHEREOF the parties hereto have set their hands and seals as of the day and year first above written.

THE DISTRICT OF PEACHLAND

by its authorized signatories:

Mayor _____

Corporate Administrator _____

0817642 BC Ltd.

by its authorized signatories:

Name: _____

Name: _____

WESTBANK FIRST NATION,

by its authorized signatories:

Name: _____

Name: _____

SCHEDULE "A"
(To Phased Development Agreement)

HOUSING AGREEMENT

THIS HOUSING AGREEMENT dated for reference the ____ day of _____, 2011

BETWEEN:

0817642 B.C. LTD., P.O. Box 49130, 2900 – 595 Burrard Street,
Vancouver, BC V7X 1J5; and

Westbank First Nation, 301 -515 Highway 97South
Kelowna, BC V1Z 3J2
(the "Owner")

AND:

DISTRICT OF PEACHLAND, having its municipal offices at
5806 Beach Avenue, Peachland, B.C. V0H 1X7

(the "District")

GIVEN THAT:

- A. 0817642 B.C. Ltd. is the registered owner in fee simple of certain lands in the District of Peachland, proposed for development of a planned residential, commercial and recreational resort area (the "Development Lands").
- B. The Owner and the District have entered into a Phased Development Agreement (the "PDA"), in respect of the Development Lands under Section 905.1 of the *Local Government Act*; dated for reference _____.
- C. It is a term of the PDA that the Owner will construct on certain parcels of land created out of the Development Lands certain affordable housing units (the "Affordable Housing Units");
- D. The parcel(s) of land derived from the Development Lands which are the subject of this particular Housing Agreement _____ is(are) legally described as _____ (the "Affordable Housing Lands");
- E. The Owner and the District have agreed to enter into this Housing Agreement under Section 905 of the *Local Government Act* in respect of each such parcel of Affordable Housing Lands at the time of obtaining a building permit to construct an Affordable Housing Unit;

- F. The Owner and the District wish to enter into this Agreement to restrict the occupancy, initial sale prices, resale prices and rental rates of the Affordable Housing Units on the Affordable Housing Lands, on the terms and conditions of this Housing Agreement, to have effect as a housing agreement under Section 905 of the *Local Government Act*;

THIS HOUSING AGREEMENT is evidence that in consideration of \$1.00 and other good and valuable consideration paid by the District to the Owner (the receipt and sufficiency of which the Owner acknowledges), the Owner covenants and agrees with the District, in accordance with Section 905 of the *Local Government Act*, as follows:

Definitions

1. In this Housing Agreement, the following terms have the following meanings:

- (a) "Affordable Housing Unit" means the residential dwelling unit on, or to be constructed on the Affordable Housing Lands to which this Housing Agreement applies, and in the context of the sale of such a residential dwelling unit that is not a building strata lot, includes the land upon which that residential dwelling unit is located;
- (b) "CMHC" means Canada Mortgage and Housing Corporation or any successor thereto;
- (c) "Eligible Owner" means an individual who:
 - (i) at the time they are approved by the Qualifying Body, has resided within the boundaries of the District of Peachland for the previous 12-month period;
 - (ii) has been pre-approved for a mortgage in relation to a Affordable Housing Unit or is self-financed;
 - (iii) has a total household income of less than 80% of the Median Income based on the individual's tax return filed with Canada Customs and Revenue Agency for the most recent taxation year, provided that the District may increase the percentage specified in this subsection up to 100% but only to the minimum extent necessary to identify Eligible Owners from time to time for the purposes of this Housing Agreement;
 - (iv) does not own any real property or any interest therein anywhere in the world; and
 - (v) has been approved as meeting criteria (i) to (iv) (and any other criteria established by the District from time to time), by the Qualifying Body;

- (d) “Eligible Occupant” means a person, other than the Owner, who is renting the Affordable Housing Unit in accordance with this Housing Agreement;
- (e) “First Purchaser” means the person to whom the Interest in an Affordable Housing Unit is first sold after issuance of the Occupancy Permit for the Affordable Housing Unit by the District;
- (f) “Interest” means the property interest of the Owner in an Affordable Housing Unit;
- (g) “Initial Maximum Sales Price” means the maximum sales price of an Affordable Housing Unit calculated in accordance with Schedule “A” and confirmed in writing by the District;
- (h) “Initial Sale” means the sale of an Affordable Housing Unit to the First Purchaser;
- (i) “Insured Mortgage” means a mortgage of an Affordable Housing Unit insured pursuant to the *National Housing Act*, R.S.C. 1985, c. N-11;
- (j) “Lender” means an “approved lender” (as defined in the *National Housing Act*, R.S.C. 1985, c. N-11) which holds an Insured Mortgage of an Affordable Housing Unit;
- (k) “Maximum Rent” means a rental charge for the Affordable Housing Unit, not to exceed the sum of the monthly strata fees (if any) payable in respect of the Affordable Housing Unit, one-twelfth of the annual property taxes payable in respect of the Affordable Housing Unit, and the amount of the monthly mortgage payment for the Affordable Housing Unit, which monthly mortgage payment will be set on the date of purchase (initial or resale) and will be based upon a mortgage:
 - (i) with a principal amount of X% of the Initial Maximum Sales Price, where X has the value established in the definition of “Resale Maximum Sale Price”;
 - (ii) payable monthly;
 - (iii) bearing interest at the lowest rate charged for a five-year fixed-rate mortgage by a chartered bank or credit union having a branch in the District; and
 - (iv) amortised over 20 years.
- (l) “Median Income” means the dollar amount that comprises the median annual household income within the District of Peachland, British Columbia as determined by the District using data from Statistics Canada;

- (m) “Option” means the Resale Option to Purchase in the form attached as Schedule “B” to be granted by the Owner to the District in respect of any sale of an Affordable Housing Unit after the Initial Sale;
- (n) “Owner” means for the purposes of the Initial Sale 0817642 B.C. Ltd., and for the purposes of any resale of an Affordable Housing Unit means any person who is a registered owner in fee simple from time to time of a lot, strata lot or parcel containing a Housing Unit;
- (o) “Previous Sale” means the most recent sale of the Affordable Housing Unit;
- (p) “Previous Sale Price” means the sale price of the Previous Sale;
- (q) “Qualifying Body” means the District or other body or entity designated by the District for the purpose of determining whether an individual is an Eligible Owner prior to occupying an Affordable Housing Unit;
- (r) “Resale Maximum Sale Price” means the lesser of:
 - (i) X% of the appraised fair market value of the Affordable Housing Unit as established in accordance with this Housing Agreement, where X is the proportion that the Initial Maximum Sale Price bears to the fair market value of the Affordable Housing Unit at the time of the Initial Sale as determined by the appraisal required by Section 5; and
 - (ii) 30% of the Median Income,
 calculated as at the time an Owner provides a copy of an appraisal to the District under Section 5;
- (s) “Tenancy Agreement” means a tenancy agreement, lease, license or other agreement granting rights to occupy an Affordable Housing Unit.

Occupancy of the Housing Unit

2. The Affordable Housing Unit may only be occupied by an Eligible Owner who has been approved as an Eligible Owner by the Qualifying Body, and the family of the Eligible Owner, which may include the Eligible Owner’s spouse, children, parents and siblings, or by an Eligible Occupant.
3. Within ten days after receiving notice from the District, the Owner shall in respect of the Affordable Housing Unit, deliver, or cause to be delivered, to the District a statutory declaration, in the form attached as Schedule “C” or such other form as may be determined from time to time by the District, sworn by the Owner, or a director or officer of the Owner, containing all of the information required to complete the statutory declaration. The District may request such a statutory declaration in respect of the Affordable Housing Unit no more than once in any calendar year. The Owner hereby

irrevocably authorizes the District to make such inquiries as it considers necessary and reasonable in order to confirm that the Owner is complying with this Housing Agreement, and irrevocably authorizes and directs the recipient of the request for information from the District to provide such information to the District.

Initial Sale of the Affordable Housing Unit

4. The Affordable Housing Unit:
 - (a) may be transferred by the Owner only to a First Purchaser who is an Eligible Owner;
 - (b) may be transferred by the Owner only for a price inclusive of all applicable taxes that does not exceed the Initial Maximum Sale Price; and
 - (c) may be transferred by the Owner only if the Owner registers the Option in the Land Title Office concurrently with the Initial Sale.
5. Within ten days of transferring the Affordable Housing Unit to the First Purchaser, the Owner shall obtain an appraisal to establish the fair market value of the Affordable Housing Unit and provide a copy of the appraisal to the District. For the purposes of the appraisal, the Appraiser shall treat the Affordable Housing Unit as if it were an unrestricted market dwelling.

Resale of a Housing Unit

6. At any time after the Initial Sale, should the Owner wish to resell an Affordable Housing Unit, the Owner shall:
 - (a) notify the District of its intention;
 - (b) obtain an appraisal to establish the fair market value of the Affordable Housing Unit and provide a copy of the appraisal to the District. For the purposes of the appraisal, the Appraiser shall treat the Affordable Housing Unit as if it were an unrestricted market dwelling;
 - (c) take no steps to list, sell or accept any offers for the Housing Unit;
 - (d) direct all potential purchasers of the Affordable Housing Unit to the District;
 - (e) transfer the Affordable Housing Unit only to an Eligible Owner; and
 - (f) transfer the Affordable Housing Unit only for a price inclusive of all applicable taxes that does not exceed the Resale Maximum Sale Price.
7. Within 30 days of receipt of the notice required by Section 6(a) and the appraisal required by Section 6(b), the District shall take steps to identify an Eligible Owner to purchase the

Affordable Housing Unit. An Eligible Owner may be identified on a list held by the District or Qualifying Body or, if there are no suitable persons on such list, may be identified by marketing the Affordable Housing Unit. On any resale, the Owner shall fully cooperate with the District in transferring the Affordable Housing Unit to an Eligible Owner, including making the Affordable Housing Unit available for showings upon reasonable notice and executing all necessary documents related to the transfer of title and the discharge of any financial encumbrances related to the Affordable Housing Unit.

8. Should the District identify an Eligible Owner to purchase the Affordable Housing Unit, the Owner shall upon closing of the transfer pay the District a \$2,500 fee to offset its costs for identifying the Eligible Owner.

Procedure for Foreclosure

9. If a Lender or CMHC commences a foreclosure proceeding (the "Proceeding") under an Insured Mortgage of the Affordable Housing Unit the Owner covenants and agrees with the District that:
 - (a) the Owner shall notify the District of the Proceeding;
 - (b) at any time after receipt of notice and during the redemption period ordered in the Proceeding (the "Redemption Period"), the District shall have the right and may apply for an order in the Proceeding unopposed by the Owner, to market and sell the Affordable Housing Unit;
 - (c) on receipt of the order in the Proceeding the District shall have the right to enter into an agreement with a licensed realtor to market and sell the Affordable Housing Unit at the prevailing commission or fee; and
 - (d) the Owner shall provide reasonable access to the Affordable Housing Unit by the District, the licensed realtor and any prospective purchaser of the Affordable Housing Unit for the purpose of repairing, cleaning, appraising, marketing and selling the Affordable Housing Unit.

CMHC Notice to District

10. In the event that the District does not sell the Affordable Housing Unit pursuant to Section 9(c), CMHC or the Lender may, 120 days after the expiry of the Redemption Period ordered in the Proceeding, issue a 30 day notice (the "Notice Period") to the District to redeem the Insured Mortgage. In the event that the District does not redeem the Insured Mortgage within the Notice Period, the provisions of this Housing Agreement restricting the occupancy and resale of the Affordable Housing Unit shall be of no further force or effect and the District shall cause notice of this Housing Agreement to be discharged from title to the Affordable Housing Unit within 7 days of expiry of the Notice Period.

CMHC Sale

11. In the event that the Affordable Housing Unit is sold by the Lender or CMHC after discharge of notice this Housing Agreement from title to the Affordable Housing Unit and such sale generates funds in excess of the balance owing under the Insured Mortgage and related costs, including charges, taxes, commissions and utilities pertaining to the Affordable Housing Unit, such excess funds shall upon receipt by the Owner be paid forthwith to the District, for its own use absolutely. This Section 11 shall bind the Owner, both before and after discharge of notice of this Housing Agreement from title to the Affordable Housing Unit.

Non-Exercise of Option

12. If within 120 days from the date the District receives notice set out in Section 6(a), the Owner has not received an offer from an Eligible Owner to purchase an Affordable Housing Unit for the Resale Maximum Sale Price, the District shall have the exclusive right to purchase the Affordable Housing Unit in accordance with the terms of the Option.
13. If the District does not exercise its rights under the Option in accordance therewith within the time provided thereunder, the Owner may sell the Affordable Housing Unit on the open market without regard to the Resale Maximum Sale Price provided that the Owner pays to the District, the amount of the actual sale price that exceeds the Resale Maximum Sales Price. The District may request the Owner to provide a true copy of the contract of purchase and sale to verify the actual sale price.
14. Upon payment of the amount required in Section 13, the District shall, at the expense of the Owner, execute a discharge of the Option from title to the Affordable Housing Unit and discharge the notice on title of this Housing Agreement in the Land Title Office.

Rental of the Affordable Housing Unit

15. At any time after the Initial sale, the Owner may rent an Affordable Housing Unit to an Eligible Occupant during any period of time in which the Owner is unable to occupy the Affordable Housing Unit, in accordance with the following additional conditions:
- (a) the Affordable Housing Unit will be used or occupied only pursuant to a tenancy agreement to be supplied by the District (the "Tenancy Agreement");
 - (b) the Affordable Housing Unit may not be rented for a cumulative rental period of more than 24 months in any 10 year period regardless of ownership;
 - (c) the monthly rent payable for the Affordable Housing Unit will not exceed the Maximum Rent, provided that the Maximum Rent may be increased annually to match any increase in the Consumer Price Index for Vancouver over the previous twelve month period;

- (d) the Owner will not require the tenant to pay any extra charges or fees for use of any common property, limited common property, or other common area, or for sanitary sewer, storm sewer, water utilities, property taxes and similar services;
- (e) the Owner will attach a copy of this Housing Agreement to the Tenancy Agreement;
- (f) the Owner will include in the Tenancy Agreement a clause entitled the Owner to terminate the Tenancy Agreement in accordance with the *Residential Tenancy Act* (British Columbia) if the tenant uses or occupies, or allows use or occupation of, the Affordable Housing Unit in breach of any of the use and occupancy restrictions contained in this Housing Agreement;
- (g) the Tenancy Agreement will provide that the tenant will not sublease the Affordable Housing Unit or assign the Tenancy Agreement, without the consent of the Owner; and
- (h) the Owner will deliver a copy of the Tenancy Agreement to the District upon demand.

District Discretion

16. The District may, in its sole discretion, provide written consent to the Owner from time to time to do something that is otherwise not permitted under this Housing Agreement, on such terms and conditions as the District considers desirable.

Specific Performance

17. The Owner agrees that because of the public interest in ensuring that all of the matters described in this Housing Agreement are complied with, the public interest strongly favours the award of a prohibitory or mandatory injunction, or an order for specific performance or other specific relief, by the Supreme Court of British Columbia at the instance of the District, in the event of an actual or threatened breach of this Housing Agreement.

Notice of Housing Agreement

18. For clarity, the Owner acknowledges and agrees that:
- (a) the District is required to file a notice of this Housing Agreement in the Land Title Office against title to the Affordable Housing Lands; and
 - (b) once such a notice is filed, this Housing Agreement binds all persons who acquire an interest in the Affordable Housing Lands as a housing agreement under Section 905 of the *Local Government Act*.

No Obligation to Enforce

19. The rights give to the District by this Housing Agreement are permissive only and nothing in this Housing Agreement imposes any legal duty of any kind on the District to any one, or obliges the District to enforce this Housing Agreement, to perform any act of to incur any expense in respect of this Housing Agreement.

No Effect on Laws or Powers

20. This Housing Agreement does not:
- (a) affect or limit the discretion, rights, duties or powers of the District or the approving officer for the District under the common law or any statute, bylaw or other enactment nor does this Housing Agreement date or give rise to, nor do the parties intend this Housing Agreement to create, any implied obligations concerning such discretionary rights, duties or powers;
 - (b) affect or limit the common law or any statute, bylaw or other enactment applying to the Affordable Housing Lands; or
 - (c) relieve the Owner from complying with any common law or any statute, regulation, bylaw or other enactment.

Priority

21. The Owner will do everything necessary, at the Owner's expense, to ensure that this Housing Agreement will be registered against title to the Affordable Housing Lands in priority to all liens, charges and encumbrances registered or pending registration against title to the Affordable Housing Lands, save and except those specifically approved in writing by the District or in favour of the District.

Waiver

22. An alleged waiver of any breach of this Housing Agreement is effective only if it is an express waiver in writing of the breach. A waiver of a breach of this Housing Agreement does not operate as a waiver of any other breach of this Housing Agreement.

Interpretation

23. In this Housing Agreement:
- (a) reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;
 - (b) 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 of Schedule of this Housing Agreement;

- (c) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Housing Agreement;
- (d) the word “enactment” has the meaning given to it in the *Interpretation Act* (British Columbia) on the reference date of this Housing Agreement;
- (e) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided;
- (f) reference to a “party” or the “parties” is a reference to a party, or the parties, to this Housing Agreement and their respective successors, assigns, trustees, administrators and receivers;
- (g) time is of the essence; and
- (h) reference to a “day”, “month” or “year” is a reference to a calendar day, calendar month, or calendar year unless otherwise expressly provided.

Further Acts

24. The Owner will do everything reasonably necessary to give effect to the intent of this Housing Agreement, including execution of further instruments.

Severance

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

No Other Agreements

26. This Housing Agreement is the entire agreement between the parties regarding its subject and it terminates and supersedes all other agreements and arrangements regarding its subject other than the Phased Development Agreement dated _____ ◆ between the Owner and the District to which this Housing Agreement is attached and forms a part, and the form of Option, which is attached hereto.

Enurement

27. This Housing Agreement binds the parties to it and their respective successors, heirs, executors and administrators.

Deed and Contract

28. By executing and delivering this Housing Agreement each of the parties intends to create both a contract and a deed executed and delivered under seal.

SCHEDULE A**(to the Housing Agreement)****INITIAL MAXIMUM SALE PRICE**

The Initial Maximum Sale Price shall be the actual Construction Cost of the Affordable Housing Unit excluding developer profit, and shall not include any amount in respect of the unserviced value of the land on which the Affordable Housing Unit is situated whether the Affordable Housing Unit is located on a conventional lot or bare land strata lot or is a strata lot in a building strata plan, or any amount in respect of developer profit but shall be adjusted to the date that the Affordable Housing Unit is initially transferred to include all carrying costs from the time of construction completion, including applicable strata fees, any fee payable for marketing the Affordable Housing Unit including a fee payable to the District to offset its costs for identifying an Eligible Owner, and the pro rata cost of all other intervening costs and expenses, including interest, building and general liability insurance, maintenance, security, utilities and applicable taxes including property tax.

“Construction Cost” shall mean all the Owner’s actual costs and expenses attributable to the completion of construction of the Affordable Housing Unit up to the approval of an occupancy permit, as determined by a qualified professional quantity surveyor at arm’s length from the Owner and confirmed by the District, acting reasonably, in writing. Without limitation, Construction Cost may include the pro rata cost of all government approvals, fees and charges, on-site and off-site servicing and connections and access, including design and engineering, all professional and other consultant site planning and building design and related site reviews, landscaping, construction, labour and materials, financing charges, course of construction insurance, property tax payable during the course of construction, bonding, warranties, construction supervision and management, and the Owner’s actual overhead expenses attributable to the construction

SCHEDULE B
(to the Housing Agreement)

The Option

FORM OF OPTION TO PURCHASE

SCHEDULE C

(to the Housing Agreement)

Statutory Declaration

CANADA)	IN THE MATTER OF A HOUSING
)	AGREEMENT UNDER SECTION 905
PROVINCE OF BRITISH COLUMBIA)	OF THE <i>LOCAL GOVERNMENT ACT</i>
)	(THE "HOUSING AGREEMENT")
)	

I, _____, of Peachland, British Columbia, do solemnly declare:

1. That I am the owner of _____ (the "Affordable Housing Unit") and make this declaration to the best of my personal knowledge.
2. This declaration is made pursuant to the Housing Agreement, in respect of the Affordable Housing Unit.
3. For the period from _____ to _____ the Affordable Housing Unit was occupied by the Eligible Owner (as defined in the Housing Agreement) whose name and current address appears below, and by the family of the Eligible Owner:

[Insert Eligible Owner – name and address]
4. If, under 3 above, I am not shown as the occupant of the Affordable Housing Unit, the rent charged each month for the Affordable Housing Unit is as follows:
 - (a) The monthly rent on the date 365 days before the date of this statutory declaration: \$_____;
 - (b) The monthly rent on the date of this statutory declaration: \$_____; and
 - (c) The proposed or actual monthly rent that will be payable on the date that is 90 days after the date of this statutory declaration: \$_____.
5. I confirm that I have complied with all of the obligations of the Owner (as defined in the Housing Agreement) under the Housing Agreement.

Schedule "B"
(To Phased Development Agreement)
Form SRW for Trails

LAND TITLE ACT

FORM C

(Section 233)

Province of British Columbia

GENERAL INSTRUMENT-PART 1 (This area for Land Title Office use)

Page 1 of 11 Pages

1. APPLICATION: (Name, address, phone number and signature of applicant, applicant's solicitor or agent)

Name of Applicant

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:

(PID)

(LEGAL DESCRIPTION)

3. NATURE OF INTEREST:

Description

Document Reference
(page and paragraph)

Person Entitled to Interest

Statutory Right of Way

Pages 6 to 7, Paragraph 1

Transferee

Section 219 Covenant

Pages 9 to 10, Paragraph 6

Transferee

4. TERMS: Part 2 of this instrument consists of (select one only)

(a) Filed Standard Charge Terms

D.F. No.

(b) Express Charge Terms

Annexed as Part 2

(c) Release

There is no Part 2 of this Instrument.

A selection of (a) include any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in Item 3 is released or discharged as a charge on the land described in Item 2.

5. TRANSFEROR(S):

6. TRANSFEREE(S): (including postal address(es) and postal code(s))

DISTRICT OF PEACHLAND, 5806 Beach Avenue, Peachland, BC V0H 1X7

LAND TITLE ACT

FORM C

(Section 233)

Province of British Columbia

GENERAL INSTRUMENT-PART 1

7. ADDITIONAL OR MODIFIED TERMS:⁶
N/A

8. EXECUTION(S):⁷ This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature

Execution Date

Transferor Signature

Y M D

2011 _____

• by its authorized signatories:

Name:

Name:

(as to both signatures)

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

* If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.

** If space insufficient, continue executions on additional page(s) in Form D.

LAND TITLE ACT

FORM D

EXECUTIONS CONTINUED

8. EXECUTION(S): This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature

Execution Date

Transferee Signature

Y M D

DISTRICT OF PEACHLAND by
its authorized signatories:

Name of Officer

2011 ____

Mayor:

Corporate Officer:

(as to both signatures)

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

* If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.

** If space insufficient, continue executions on additional page(s) in Form D

TERMS OF INSTRUMENT – PART 2

**STATUTORY RIGHT OF WAY AND SECTION 219 COVENANT AGREEMENT –
PUBLIC ACCESS**

THIS AGREEMENT dated for reference _____, ____ is

BETWEEN:

●

(the “Owner”)

AND:

DISTRICT OF PEACHLAND, a municipality under the laws of the Province of British Columbia having its offices at 5806 Beach Avenue, Peachland, BC V0H 1X7

(the “District”)

RECITALS:

- A. The Owner is the registered owner of the land (the "Land") in the District of Peachland described in Item 2 of the *Land Title Act* Form C to which this Agreement is attached;
- B. Pursuant to a Phased Development Agreement between the District and the Owner made the ___ day of _____, 2011 (the “Phased Development Agreement”), the Owner will construct public trail works on the Right of Way Area (defined below) and has agreed to grant to the District a statutory right of way for the construction, repair, maintenance, operation, inspection, cleaning and use of such public trail works, all generally described as follows:

all public trail works including but not limited to catch basins, drywells, culverts, ditches and associated drainage works, walkways, boulevards, with gravel, concrete, asphalt, stone, brick, wood, unit pavers or other all-weather impervious surface of any kind, landscaping, utility boxes, electrical works including lighting, retaining walls, railings, fences, gates, benches, signs, waste receptacles, or any of them, including all pipes, valves, fittings, wires, conduits, lines, meters, appliances, attachments and other facilities and appurtenances necessary or convenient for the passage of the public and use of the Right of Way Area (defined below) as a trail open to the public (the “Works”);

- C. Section 218 of the *Land Title Act* enables the Owner to grant in favour of the District an easement without a dominant tenement known as a statutory right of way;
- D. This statutory right of way is necessary for the operation and maintenance of the District's undertaking;
- E. Section 219 of the *Land Title Act* enables the Owner to grant in favour of the District a covenant of a positive nature registrable against title to the Land, and enforceable against the Owner and the successors in title of the Owner.

THIS AGREEMENT is evidence that, pursuant to sections 218 and 219 of the *Land Title Act*, and in consideration of ONE DOLLAR (\$1.00) paid by the District to the Owner, and other good and valuable consideration (the receipt and sufficiency of which the Owner hereby acknowledges), the Owner grants to and covenants with the District as follows:

1. **Grant of Statutory Right of Way** – Pursuant to section 218 of the *Land Title Act*, the Owner hereby grants, conveys and confirms to the District in perpetuity the full, free and uninterrupted right, liberty, easement and statutory right of way (the "Statutory Right of Way") for the District, its officers, employees, licencees, contractors and agents, in common with the Owner, at all times hereafter from time to time at their will and pleasure to enter, go, be on, pass and repass those portions of the Land shown outlined in heavy black on the plan of statutory right of way deposited in the Kamloops Land Title Office under number _____ (the "Right of Way Area"), to:
 - (a) construct, repair, maintain, inspect, clean, use and operate the Works as a public trail open to the public from time to time in the District's discretion;
 - (b) establish grades and levels upon the Right of Way Area;
 - (c) excavate or otherwise alter the contours of the Right of Way Area and to backfill trenches on the Right of Way Area provided such excavation or alteration does not adversely affect the balance of the Owner's Land;
 - (d) remove from the Right of Way Area such structures, improvements, fixtures, fences and driveways, trees, shrubs, plants, vehicles, storage facilities and other obstructions whatsoever as, in the District's opinion, acting reasonably, is necessary in order to construct, repair, alter, operate, maintain, clean, inspect or replace the Works and provided that the District gives the Owner prior notice of its intention to do so;
 - (e) permit the public (without the need for any express invitation) to have use of the Right of Way Area by foot, bicycle, skis and other means of conveyance but not by motor vehicles;

- (f) landscape the Right of Way Area as a public trail, including tree trimming and reforestation;
- (g) store upon the Right of Way Area all vehicles, equipment, machinery, materials or other moveable property of any description necessary to construct, repair, operate, use, maintain, inspect or clean the Works; and
- (h) do all other things on the Right of Way Area as may be reasonably necessary, desirable or incidental to the Works.

2. **Owner's Obligations** - The Owner must:

- (a) not do or permit to be done anything in the Right of Way Area which in the opinion of the District, 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 Works or the rights granted under this Statutory Right of Way;
- (b) trim or, if the District requires, permit the District to trim or cut down any tree or other growth on the Right of Way Area or the Land which in the opinion of the District constitutes or may constitute a danger, impairment or obstruction to the Works or to those using the Right of Way Area in connection with the Works;
- (c) permit the District to peaceably hold and enjoy the rights hereby granted;
- (d) permit the District to:
 - (i) repair, inspect, maintain and clean the surface of the Right of Way Area and remove grass and other growth from the surface of the Right of Way Area; and
 - (ii) to do all other things in the Right of Way Area which in the reasonable opinion of the District are reasonably necessary for the safe use and preservation of the Right of Way Area for the purposes of the Works and the Statutory Right of Way;
- (e) not deposit or place garbage, debris or other material on the Right of Way Area;
- (f) not place, install, erect, construct or maintain any building, structure, foundation, mobile or manufactured home or other improvement (including any paving, walls or fences) on the Right of Way Area;
- (g) not carry on blasting on or adjacent to the Right of Way Area without the District's prior written consent;

- (h) not diminish or increase the soil cover over any Works without the District's approval; and
- (i) 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 District the rights, liberties and statutory right of way hereby granted.

3. District's Obligations - The District must:

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

4. No District Obligation to Maintain - For certainty, the parties agree that:

- (a) the District is under no obligation to construct, clean, repair, inspect, operate or maintain the Works or the Right of Way Area but may do so in its discretion and in accordance with the terms of the Statutory Right of Way; and
- (b) the Owner is required to construct, maintain, clean, inspect, operate and repair the Works as set out in section 6.

5. District's Rights - The District:

- (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 Owner or any person, firm or corporation claiming by, through, under or in trust for the Owner;
- (b) in its sole discretion may at any time remove any or all of the Works installed by the District in, upon or under the Right of Way Area, all of which remain chattels and the property of the District, notwithstanding that they may be annexed or affixed to the freehold;
- (c) on default by the Owner of any of the Owner's obligations under this Agreement, including the Owner's obligations under section 6, may, but is not obliged to, rectify the default; and

- (d) despite subsection 5(b), if the District abandons, releases or discharges the Statutory Right of Way, the District is not responsible or obligated in any way to remove or pay for the cost of removal of any Works from the Right of Way Area.

6. **Land Title Act Section 219 Covenant** – Pursuant to section 219 of the *Land Title Act*, the Owner:

- (a) will construct, install and complete a public trail or trails on the Right of Way Area in accordance with the terms of the Phased Development Agreement;
- (b) will only use the Land in accordance with the following
 - (i) the Owner will, at all times, keep the Works and the Right of Way Area open to the public (except with the District's consent), clean and in good repair sufficient for safe passage by the public; and
 - (ii) if, in the opinion of the District, the Owner has breached subsection 7(b)(i) above and the District has incurred costs to remedy the Owner's breach, the Owner will, within 30 days of receipt of an invoice from the District, reimburse the District for any costs incurred by the District in connection with the repair, maintenance, inspection or cleaning of the Works in order to make the Works clean and safe for passage by the public;
- (c) covenants to and does hereby indemnify and save harmless the District, its elected officials, officers, and employees at all times from all losses, damages, actions, suits, claims, demands, costs, expenses, fees and liabilities of any nature whatsoever by whomsoever brought, made or suffered for which the District is or may become liable, incur or suffer by reason of any injury to person (including death) or loss or damage to property or economic loss arising directly or indirectly from a breach or non-performance by the Owner of its covenants or obligations in this Agreement, or arising directly or indirectly, or from any wrongful act, omission or negligence of the Owner in, on, around and about the Right of Way Area or in any way connected to or relating to the Works;
- (d) will take out and keep in full force and effect, or cause to be maintained, at all times, a policy of:
 - (i) commercial general liability insurance, including all risks normally insured by prudent owners in connection with the use of properties similar to the Works, in respect of the use of the Works, for claims for personal injury, death or property damage arising out of any one occurrence in an amount of at least \$5,000,000.00 (or such greater amount as may be from time to time required by the District, acting reasonably), with the District as named insured; and

- (ii) the Owner acknowledges that the Owner's insurance obligations under this subsection (d) will not limit the liability of the Owner to the District in any way;
 - (e) will from time to time, whenever reasonably required by the District, furnish to the District 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 and if the Owner fails to insure as required under this section, the District, after written notice to the Owner, may, but shall not be obliged to, effect such insurance in the name and at the expense of the Owner, and the Owner will promptly repay the District for all costs incurred by the District in so doing; and
 - (f) will not sell or transfer, directly or indirectly, any legal or beneficial interest in the Land 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 with the District 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.
7. **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.
8. **Discretion** - Wherever in this Agreement the approval of the District is required, some act or thing is to be done to the District's satisfaction, the District is entitled to form an opinion, or the District 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 District's Director of Engineering (the "Director");
 - (b) the approval, opinion or satisfaction is in the discretion of the Director acting reasonably in accordance with municipal engineering practice;
 - (c) any discretion of the Director is not subject to public law duties and the principles of procedural fairness and the rules of natural justice have no application; and
 - (d) the sole discretion of the District is deemed to be the sole, absolute and unfettered discretion of the District and the principles of procedural fairness and the rules of natural justice have no application.
9. **No Effect on Powers** - This Agreement does not:

- (a) affect or limit the discretion, rights, duties or powers of the District 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 Land; or
 - (c) relieve the Owner from complying with the common law or any statute, bylaw or other enactment.
10. **Notice** - Any notice to be given pursuant to this Agreement must be in writing and may be delivered personally or sent by prepaid mail. The addresses of the parties for the purpose of notice are the addresses hereinbefore set out. If notice is delivered personally, it may be left at the relevant address in the same manner as ordinary mail is left by Canada Post and is to be deemed given when delivered. If notice is mailed, it is to be deemed given 5 days after mailing by deposit at a Canada Post mailing point or office. In the case of any strike or other event causing disruption of ordinary Canada Post operations, a party giving notice must do so by personal delivery as provided in this section. 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.
11. **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.
12. **Entire Agreement** - No amendment of this Agreement, is valid or binding unless in writing and executed by the parties.
13. **Headings** - The headings in this Statutory Right of Way are inserted for reference and convenience only and must not be used to construe or interpret the provisions hereof.
14. **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 section 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”.
15. **Interest In Land and Enurement** - This Agreement runs with the Land and each and every part into which the Land may be subdivided or consolidated by any means (including by deposit of strata plan or leasehold plan of any kind), but no part of the fee of the Land passes to or is vested in the District under or by this Agreement and the Owner may fully use the Right of Way Area and Land 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.
16. **Priority** – The Owner will at its own expense, do or cause to be done all acts necessary to grant priority to this Agreement over all financial charges and encumbrances registered or pending registration against title to the Land at the time application is made to register this Agreement.

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

Schedule "A"
Right of Way Area

END OF DOCUMENT

**SCHEDULE “C”
(To Phased Development Agreement)
SUSTAINABLE DEVELOPMENT FEATURES**

The following are the sustainable development features referred to in Section 11 of this Agreement:

Green Building Standards

- Commit to Green Building Standards where practical

Energy Conservation

- Consider passive solar design, natural ventilation and day-lighting through site and building design
- Light pollution to be reduced wherever possible
- Consider heat recovery systems (HRV) where appropriate

Water Conservation

- Employ Green Building Strategies
- Best efforts to have water efficient landscaping

Green Roofs & Terraces

- Consider green roofs where practical

Creek Side Green Infrastructure

- Employ low impact development standards

Alternative Energy sources & Energy Conservation

- Consider ground source heating and cooling for all building where practical
- Consider passive measures for cooling
- Consider solar and wind power if feasible
- Consider more energy efficient street lighting

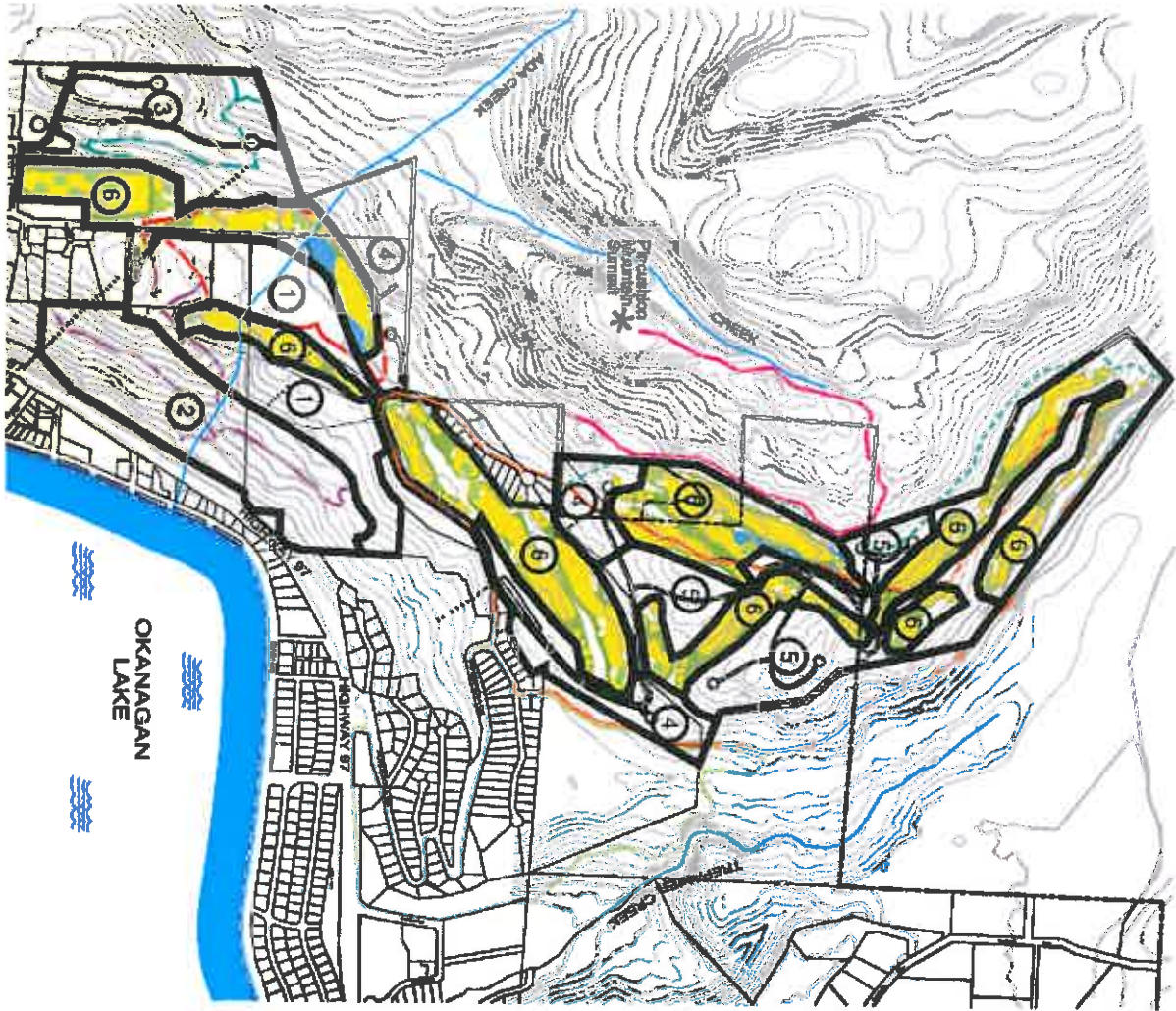
Integrated Stormwater Management

- Stormwater runoff to be managed on a lot, a neighbourhoods and a watershed level
- Protect streams, and where possible enhance streams where practical

Solid Waste Management Strategy

- Provide recycling facilities for simplified separation and collection of recyclable materials
- Consider recycling site generate organics from construction activities where practical
- Re-use site generated rock where practical
- Re-use excess structural fill in close proximity to the development site where practical.

SCHEDULE "D"
(To Phased Development Agreement)
ZONING MAP AND DEVELOPMENT AREAS



Scale
 1:500
 1" = 500'
 1:1000
 1" = 1000'

Development Legend	
①	VILLAGE CENTRE
②	VINEYARD / WINERY
③	ALPINE
④	MULTIPLE FAMILY
⑤	SINGLE FAMILY
⑥	GOLF

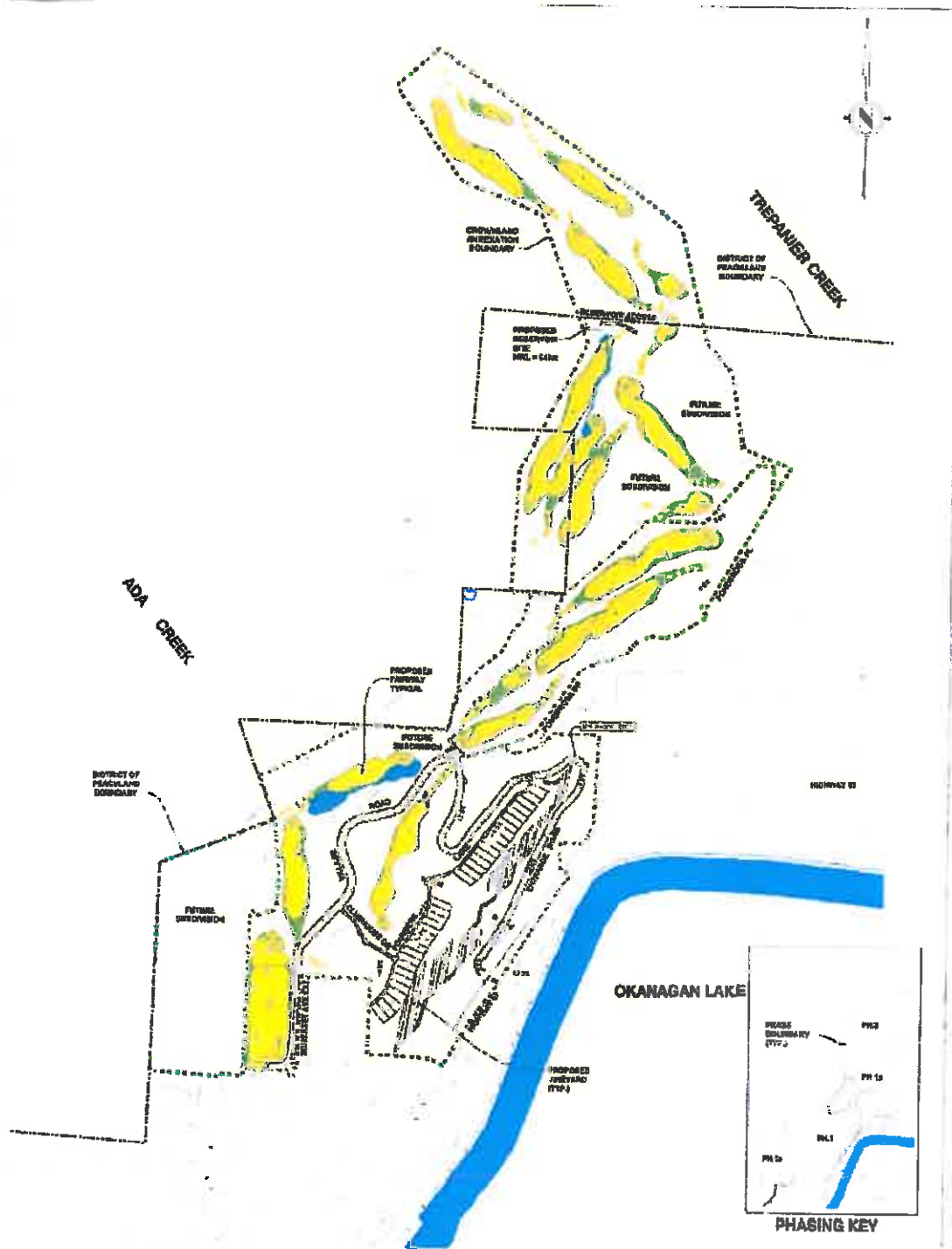
No.	Date	Description
01	04/01/06	Preparation Village Plan

NEW TOWN
 ARCHITECTURE
 URBAN PLANNING

1400 PARKWAY STREET
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Appendix 1

SCHEDULE "E"
(To Phased Development Agreement)
CONCEPT PLAN AND PROJECT PHASING PLAN



PROJECT PHASING

Scale: 1:1000



**PONDEROSA / PINCUSHION RIDGE
 HIGHWAY 97 & PONDEROSA DRIVE
 Peachland, BC**

Schedule "G"
(To Phased Development Agreement)

ASSIGNMENT/ASSUMPTION AGREEMENT

**ASSIGNMENT OF PHASED DEVELOPMENT AGREEMENT TO
AN OWNER OF AN INDIVIDUAL SUBDIVIDED PARCEL**

THIS INSTRUMENT dated the _____ day of _____, 20____

BETWEEN:

[Name and Address of the Party making the Assignment]
("the Assignor")

AND:

[Name and Address of the Party to whom the Assignment is being made]
(the "Assignee")

WHEREAS:

A. The Assignor (as hereinafter defined) and the District of Peachland (the "**District**") entered into a Phased Development Agreement dated _____, 2011 (the "**PDA**"), with respect to certain lands and premises located in Peachland, British Columbia and more particularly described in the PDA (the "**PDA Lands**");

B. Section 905.2(5) of the *Local Government Act* authorizes the Assignor to assign the PDA to a subsequent owner of land, if the subsequent owner is within a class of persons identified in the PDA or the local government agrees to the assignment;

C. Section 21.1 of the PDA authorizes the Assignor to assign the PDA to subsequent owners of a subdivided parcel derived from the PDA Lands , with the consent of the District, if the assignment is on the terms set out herein;

D. The purpose of the District and the Assignor in agreeing to this form of assignment is to extend the protection from zoning changes provided for in Part 4 of the PDA to the subsequent owner of the subdivided parcel derived from the PDA Lands in respect of the subdivided parcel they acquire, without interfering with the operation of the PDA for other purposes;

E. The Assignee has purchased the following subdivided parcel(s) derived from the PDA Lands:

[Fill in the Legal Description] (the "**Assignee's Land**");

The Assignee has agreed to take an assignment of the PDA in respect of the Assignee's Land, on the terms and conditions set out in this Agreement;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained and the sum of \$1.00 now paid by the Assignee to the Assignor (the receipt of which is hereby acknowledged):

1. For the purposes of this Agreement:

"Agreement" mean this Assignment of Phased Development Agreement to an Owner of an Individual Subdivided Parcel, by the Assignor and the Assignee

"Assignor" means 0817642 BC Ltd. or a previous assignee of the PDA;

2. The Assignor hereby assigns to the Assignee all right, title, benefit, interest, privilege and advantage of the Assignor in and to the PDA, as it relates to the application of Parts 4 and 5 of the PDA to the Assignee's Land, to have and to hold the same unto the Assignee for the unexpired term of the PDA, on the basis set out in Sections 3 and 4 of this Agreement.

3. The parties hereto further agree that:

a) the assignment provided for in Section 2 does not in any way affect, or give the Assignee any rights of any kind, in respect of:

i) the rights and obligations of the Assignor as against the District under the PDA;

ii) the rights and obligations of the District as against the Assignor under the PDA;

iii) the District's right to terminate the PDA under Part 6 of the PDA;

b) the Assignee will cooperate fully and promptly to execute all documentation that the Assignor may seek, and provide all authorizations, access and information that the Assignor may seek, to facilitate or enable the performance and discharge by the Assignor of its rights and obligations under the PDA; and

c) the Assignee will indemnify and save the Assignor harmless from and against any and all claims, demands, liabilities, obligations, actions, suits, losses, damages, proceedings, costs, and expenses (including the full amount of any legal expenses invoiced to the Assignor) which may arise or are made or claimed against or suffered or incurred by the Assignor by reason of the failure of the Assignee to meet its obligation under Section 3(b) hereof.

4. In the event that the Assignee transfers any part of the Assignee's Land to any party (the **"Subsequent Assignee"**), the Assignee may assign its rights under this Agreement to the Subsequent Assignee in respect of such part of the Assignee's Land provided that:

- a) the Assignee will continue to be liable to the Assignor in respect of all of the Assignee's obligations pursuant to this Agreement; and
 - b) the Subsequent Assignee enters into a written agreement with the Assignor assuming all of the Assignee's obligations in respect of such part of the Assignee's Land pursuant to this Agreement.
5. In this Agreement, a word importing the masculine gender includes the feminine or neuter, and a word importing the singular includes the plural and vice versa.
 6. This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.
 7. Time is of the essence of this Agreement.
 8. No provision of this Agreement will be considered to have been waived by the Assignor unless the waiver is expressed in writing. The waiver by the Assignor of any breach by the Assignee is not to be construed as or constitute a waiver of any further or other breach
 9. This Agreement may be executed and delivered in several counterparts and by facsimile.

IN WITNESS WHEREOF the parties have executed this Agreement.

0817642 BC Ltd. [or its assignee under Part 21 of the PDA, if any]

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

[NAME OF ASSIGNEE]

Per: _____
Authorized Signatory

SCHEDULE “H”
(To Phased Development Agreement)
TRAFFIC SAFETY STUDY TERMS OF REFERENCE

With respect to scope and methodology comments would be as follows:

1. Project Scope: Should include both the Ponderosa Road corridor from the site to Highway 97 and the Somerset/Princeton corridor from the site to Highway 97.
2. Existing Conditions:
 - a. Should include an assessment and inventory of physical/geometry on each corridor
 - b. Should also include an assessment of existing users (traffic volumes, pedestrians, cyclists, crossings, and bus stops) and adjacent land uses
 - c. Existing safety concerns and deficiencies should be noted for each access corridor
3. Future conditions:
 - a. Total background + development traffic for future horizon(s) should be confirmed
 - b. Known improvements (associated with this development or other) should be determined
 - c. Impact of new development traffic (primarily with respect to safety of all users) should be determined
4. Safety Assessment should consider the impact of new development traffic on:
 - a. Operation at existing intersections (in particular with respect to queuing, turning movements, approach grades, sight distance)
 - b. Existing adjacent land uses (private accesses etc.)
 - c. Other users pedestrians, cyclists, transit, crossing opportunities, and access to transit stops
 - d. Compatibility with the District’s existing design criteria, road network classification system, and preferred pedestrian/cycling routes
 - e. An evaluation/safety audit of the proposed road/intersection improvements as they are known (i.e. at consolidated Ponderosa/13th or at Somerset/Princeton)
5. Recommendations:
 - a. Provide recommendations for safety improvements/mitigations on each corridor (should consider geometric, physical, and operational/signing improvements as appropriate)
 - b. Recommendations should consider mitigations/improvements that address both existing deficiencies and development triggered deficiencies
 - c. Recommendations for any physical/geometric improvements should consider impacts to adjacent properties and/or existing infrastructure (i.e. property impacts, driveway tie-ins, utilities, etc.)
 - d. Recommendations should identify an appropriate staging plan and planning level costs for each recommended improvements

The engineering servicing consultant (Aplin & Martin) should ensure that sufficient communication/coordination takes place between their team, the safety consultant (CTQ), the traffic consultant (OPUS), and the developer (Tree Group); to ensure that development phasing assumptions and existing road improvement design assumptions are consistent with what is understood by all parties (including the District and BC MoT). The last round of traffic analysis will assume a 50/50 split between the two accesses.