

SCHEDULE "A"

PARKING LICENCE AGREEMENT

THIS AGREEMENT dated for reference the ___ day of _____, 2012 is

BETWEEN:

DISTRICT OF PEACHLAND, 5806 Beach Avenue, Peachland, B.C.
VOH 1X0

(the "District")

AND:

0855150 B.C. LTD. (Inc. No. BC0855150), 4421 1st Street,
Peachland, B.C. V0H 1X7

(the "Developer")

WHEREAS:

A. The District is the registered owner in fee simple of those lands in Peachland, British Columbia, legally described as:

Parcel Identifier: 004-005-589

Lot 15 Block 3 District Lot 490 Osoyoos Division Yale District Plan 44

Parcel Identifier: 004-005-597

Lot 16 Block 3 District Lot 490 Osoyoos Division Yale District Plan 44

Parcel Identifier: 004-005-601

Lot 17 Block 3 District Lot 490 Osoyoos Division Yale District Plan 44

Parcel Identifier: 004-005-619

Lot 18 Block 3 District Lot 490 Osoyoos Division Yale District Plan 44

Parcel Identifier: 004-005-627

Lot 19 Block 3 District Lot 490 Osoyoos Division Yale District Plan 44

Parcel Identifier: 004-005-546

Lot 20 Block 3 District Lot 490 Osoyoos Division Yale District Plan 44

Parcel Identifier: 004-005-554

Lot 21 Block 3 District Lot 490 Osoyoos Division Yale District Plan 44

Parcel Identifier: 004-005-562

Lot 22 Block 3 District Lot 490 Osoyoos Division Yale District Plan 44

(together, the “District Lands”);

- B. The Developer is the registered owner in fee simple of those lands in Peachland, British Columbia, legally described as:

Parcel Identifier: 004-005-538

Lot 2 Block 3 District Lot 490 Osoyoos Division Yale District Plan 44

Parcel Identifier: 004-005-345

Lot 3 Block 3 District Lot 490 Osoyoos Division Yale District Plan 44; and

The Municipal Lane, located at the north boundary of Lots 15 to 22, between Waldo Way and Highway 97 right of way, (16 ft wide, and 200 ft in length)

(together, the “Developer Lands”);

- C. The Developer has constructed a 3-storey building on the Developer Lands, with retail space on the main floor, office space on the second floor, and residential housing on the third floor (the “New Development”);
- D. In accordance with District of Peachland Zoning Bylaw No. 1375, 1996, the Developer must provide 57 off-street parking spaces as part of the New Development;
- E. The Developer has constructed a parking lot on the District Lands (the “Parking Lot”) and, in exchange for the Developer constructing the Parking Lot, the District agrees to grant the Developer a temporary licence to use 57 parking spaces in the Parking Lot, which spaces shall be counted towards the number of off-street parking spaces to be provided by the Developer as part of the New Development;

NOW THEREFORE in consideration of the mutual covenants contained herein and for other good and valuable consideration given by each party to the other (the receipt and sufficiency of which is hereby acknowledged by each of them), the parties hereto covenant and agree as follows:

Parking Licence

1. In consideration for the Developer constructing the Parking Lot on the District Lands, the District hereby grants to the Developer the non-exclusive right and licence (the “Licence”) to use and permit others to use 57 parking spaces in the Parking Lot throughout the Term, for the purpose of parking motor vehicles in connection with the New Development.

Term

2. The term of the Licence is for a period 5 years (the “Term”), beginning on October 1, 2012 (the Commencement Date”) and expiring on September 30, 2017, subject to earlier termination or renewal pursuant to the terms of this Agreement.

Renewal

3. No later than 6 months before the end of the Term, the Developer may, by providing written notice to the District, renew the Licence on the same terms and conditions, save for this right of renewal, for one further term of 5 years.

Designated Parking

4. The Developer may install signage in the Parking Lot in order to designate 57reserved parking spaces for use by residential and commercial tenants of the New Development, including employees of commercial tenants, and shall have exclusive use of those designated spaces throughout the Term. The remaining parking spaces to which the Developer is entitled pursuant to the Licence shall be undesignated and use of those spaces shall be shared with the public on a first come, first serve basis.

Developer’s Covenants

5. The Developer covenants and agrees with the District:
 - (a) not to do, suffer, or permit anything that may be or become a nuisance or annoyance in, on, or from the Parking Lot to the owners, occupiers, or users of adjoining lands or to the public, including the accumulation of rubbish or unused personal property of any kind;
 - (b) no to do, suffer, or permit any act or neglect that may in any manner directly or indirectly cause injury to the Parking Lot or to the District Lands;
 - (c) to use the Parking Lot in compliance with any and all laws, statutes, enactments, bylaws, regulations, and orders from time to time in force and to obtain all required approvals and permits thereunder and not to do or omit to do anything on or from the Parking Lot in contravention thereof.

Developer Insurance

6. The Developer must, at its sole expense, obtain and maintain during the Term comprehensive general liability insurance providing coverage for death, bodily injury, property loss and damage, and all other losses, arising out of or in connection with the Developer’s use of the Parking Lot in an amount not less than \$2,000,000.00 per occurrence.

General Insurance Requirements

7. All policies of insurance required to be taken out by the Developer under this Agreement shall be provided by an insurance company entitled to carry on the business of insurance under the laws of British Columbia, shall name the District as an additional insured, shall not be cancelled without the insurer providing the District with 30 clear days written notice stating when such cancellation is to be effective, shall not include a deductible greater than \$5,000.00 per occurrence, and shall be on other terms acceptable to the District.

Insurance Certificates

8. The Developer must provide the District with certificates of insurance confirming the placement and maintenance of the insurance required under this Agreement prior to the commencement of the Term and thereafter immediately after a request to do so by the District.

Release and Indemnity

9. The Developer shall at all times and does hereby indemnify, save harmless, release and forever discharge the District from and against all manner of actions, causes of action, claims, debts, suits, damages, demands, promises, and costs (including all legal costs associated with defending a claim) at law or in equity whether known or unknown, including without limitation for injury to persons or property, including death of any person, directly or indirectly arising or resulting from, or attributable to, any act, omission, negligence or default of the Developer in connection with or in consequence of this Licence and its use of the Parking Lot.

Survival of Indemnities

10. The obligations under section 9 survive the expiry or earlier termination of this Agreement.

Termination Due to Default

11. If and whenever:
 - (a) the Developer does not fully observe, perform, and keep each and every material term, covenant, agreement, stipulation, obligation, condition, and provision of this Agreement to be observed, performed, and kept by the Developer, and persists in such default for 30 days after written notice by the District;
 - (b) the Parking Lot, or any part of it, is damaged by any cause so that in the opinion of the District the Parking Lot is no longer reasonably fit for use by the Developer

for the purposes set out in this Agreement for any period of time in excess of 60 days;

- (c) the Developer makes any assignment for the benefit of creditors or becomes insolvent or bankrupt; or
- (d) proceedings are begun to wind up the Developer,

then the District may, at its option, terminate the Licence and the Term shall then become immediately forfeited and void and the Developer shall immediately cease all use and occupation of the Parking Lot.

Termination Without Default

- 12. The District may terminate this Agreement for any or no reason (other than default of the Developer, for which the District may terminate this Agreement pursuant to section 11) upon 6 month's written notice to the Developer, and upon such termination the District shall pay to the Developer a proportionate share of its construction costs for construction of the Parking Lot according to the following formula:

$$\text{Construction Costs} \times \frac{10 - \# \text{ of years elapsed since Commencement Date (or pro-rated portion thereof)}}{10}$$

Condition of District Lands and Parking Lot

- 13. The Developer accepts and uses the District Lands and the Parking Lot "as is", without any representations, warranties or assurances from the District as to their state or condition or their suitability for the Developer's purposes.

No Interest in District Lands

- 14. The Developer acknowledges and agrees that the Licence granted hereby creates a non-exclusive contractual licence only and the Developer acquires no interest in the District Lands but only the non-exclusive right to use the Parking Lot in accordance with the terms and conditions of this Agreement.

Maintenance and Repair

- 15. The District shall carry out all necessary maintenance and repair of the Parking Lot throughout the Term, including all necessary snow and ice removal in accordance with District policy. The Developer and the District shall share the costs of repairing and maintaining the Parking Lot on a proportionate basis, with the Developer paying 72% of all costs, based on the Developer's License of 72% of all parking spaces. The Developer shall pay its proportionate share of costs within 30 days of receiving an invoice from the District.

Further Interests

16. The District may, from time to time, grant additional licenses and other rights and privileges to third parties with respect to use of the District Lands and the Parking Lot, provided that such rights and privileges do not substantially impair the Developer's rights under this Agreement.

No Encumbrance

17. The Developer shall not charge, mortgage, or encumber or purport to charge, mortgage, or encumber the District Lands or the Parking Lot.

Entire Agreement

18. The provisions in this Agreement constitute the whole of the agreement between the parties and supersede all previous communications, representations, warranties, covenants and agreements, whether verbal or written, between the parties with respect to the subject matter of this Agreement.

No Joint Venture

19. Nothing contained in this Agreement creates the relationship of principal and agent or of partnership, joint venture or business enterprise or entity between the parties or gives the Developer any power or authority to bind the District in any way.

Notices

20. Where any notice, request, direction or other communication (any of which is a "Notice") shall be given or made by a party under this Agreement, it shall be in writing and is effective if delivered in person, sent by registered mail addressed to the party for whom it is intended at the address set forth above in the Agreement, or sent by fax to the District at (250) 767-3433 or to the Developer at 4421 1st Street as the case may be, provided that any Notice to the District shall be to the attention of the District's Chief Administrative Officer. Any Notice is deemed to have been given if delivered in person, when delivered; if by registered mail, when postal receipt is acknowledged by the other party; if by fax, when transmitted. The postal address or fax number of a party may be changed by notice in the manner set out in this provision.

No Effect on Law or Powers

21. Nothing contained or implied herein prejudices or affects the District's rights and powers in the exercise of its functions pursuant to the *Community Charter* (British Columbia) or its rights and powers under any enactment to the extent the same are applicable to the District Lands and the Parking Lot, as if this Agreement had not been fully executed and delivered.

Interpretation

22. In this Agreement:
- (a) reference to the singular includes a reference to the plural and vice versa, unless the context requires otherwise;
 - (b) a particular numbered section is a reference to the correspondingly numbered section of this Agreement;
 - (c) an “enactment” is a reference to an enactment as that term is defined in the *Interpretation Act* (British Columbia) of the day this Agreement is made;
 - (d) any enactment is a reference to that enactment as amended, revised, consolidated or replaced;
 - (e) section headings are inserted for ease of reference and are not to be used in interpreting this Agreement;
 - (f) a reference to a party is a reference to a party to this Agreement;
 - (g) time is of the essence;
 - (h) where the word “including” is followed by a list, the contents of the list shall not circumscribe the generality of the expression immediately preceding the word “including”; and
 - (i) a reference to a party is deemed to include the heirs, executors, administrators, successors, assigns, servants, employees, agents, contractors, elected and appointed officials, officers, directors, licensees and invitees of such party where the context so requires or allows.

District Discretion

23. Wherever in this Agreement the approval or consent 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 the sole discretion:
- (a) the relevant provision is not deemed to have been fulfilled or waived unless the approval, consent, opinion or expression of satisfaction is in writing signed by the District or its authorized representative;
 - (b) the approval, consent, opinion or satisfaction is in the discretion of the District, acting reasonably; and

- (c) the sole discretion of the District is deemed to be the sole, absolute and unfettered discretion of the District.

Severance

24. If any portion of this Agreement is held invalid by a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid shall not affect the validity of the remainder of the Agreement.

No Public Law Duty

25. Where the District is required or permitted by this Agreement to form an opinion, exercise its discretion, express satisfaction, make a determination or give its consent, the District is under no public law duty of fairness or natural justice in that regard and the District may do any of those things in the same manner as if it were a private party and not a public body.

Binding on Successors

26. This Agreement enures to the benefit of and is binding upon the parties and their respective successors and assigns, notwithstanding any rule of law or equity to the contrary.

Laws of British Columbia

27. This Agreement shall be construed according to the laws of the Province of British Columbia.

Waiver or Non-Action

28. Waiver by the District of any breach of any term, covenant or condition of this Agreement by the Developer shall not be deemed to be a waiver of any subsequent default by the Developer. Failure by the District to take any action in respect of any breach of any term, covenant or condition of this Agreement by the Developer shall not be deemed to be a waiver of such term, covenant or condition.

As evidence of their agreement to be bound by the above terms, the District and the Developer each have executed this Agreement on the respective dates written below:

DISTRICT OF PEACHLAND by its authorized signatories:

Mayor:

Corporate Officer:

Date

0855150 B.C. LTD. by its authorized signatory(ies):

Authorized Signatory:

Authorized Signatory:

Date

