**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 though 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 teams 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 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) 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 pen¯nit, 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) 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 terns 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 patty 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**
**(TO BE ATTACHED)**

**SCHEDULE "B"**
**(To Phased Development Agreement)**
**FORM OF SRW FOR TRAILS**
**[TO BE ATTACHED]**

**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

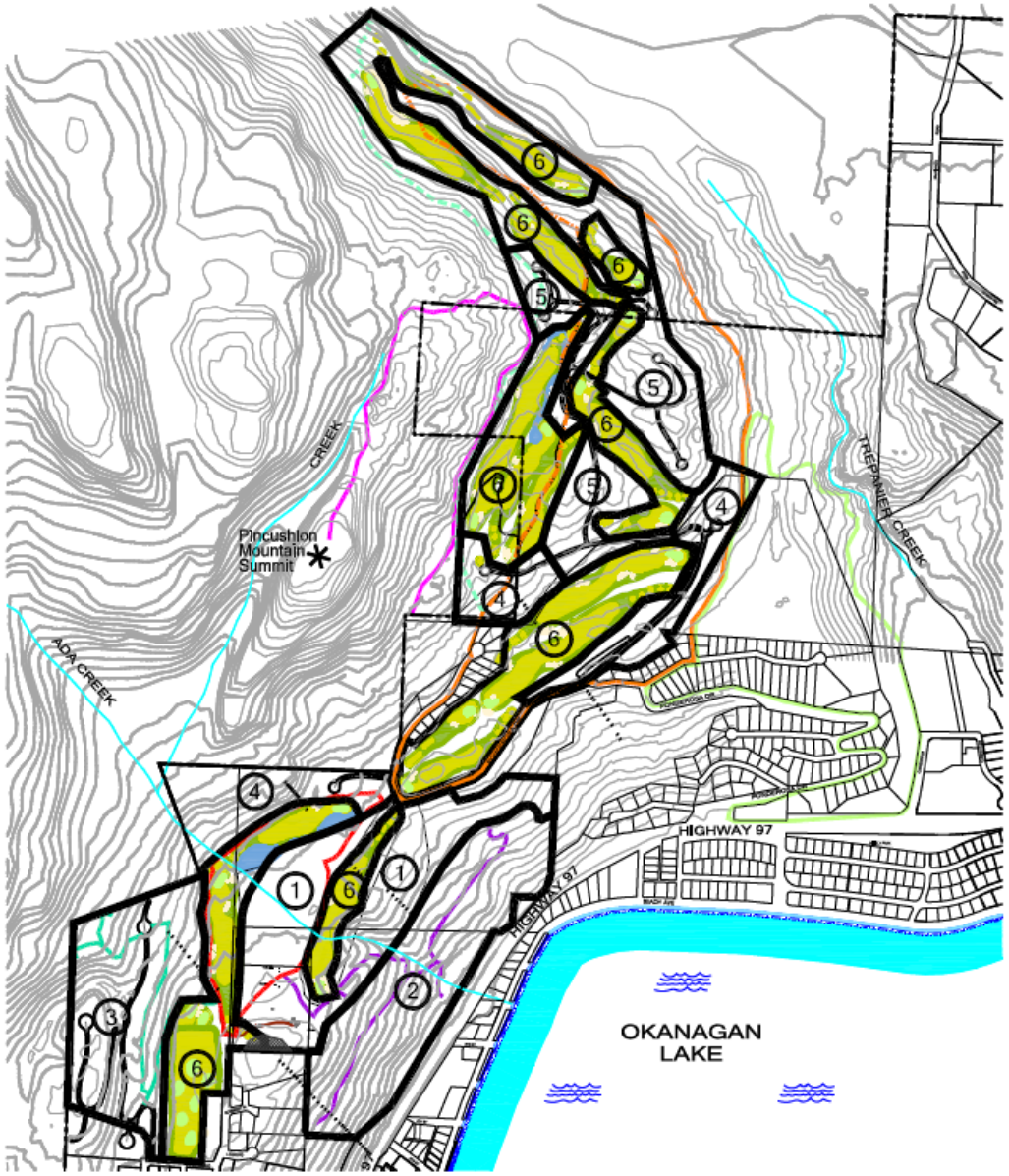
Integrated Stormwater Management

- 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**






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

| No. | Date | Description |
|---|---|---|
| REVISIONS | | |

project title
Pincushion Village Plan

Project no. 1511
File no. MDA-Zoning

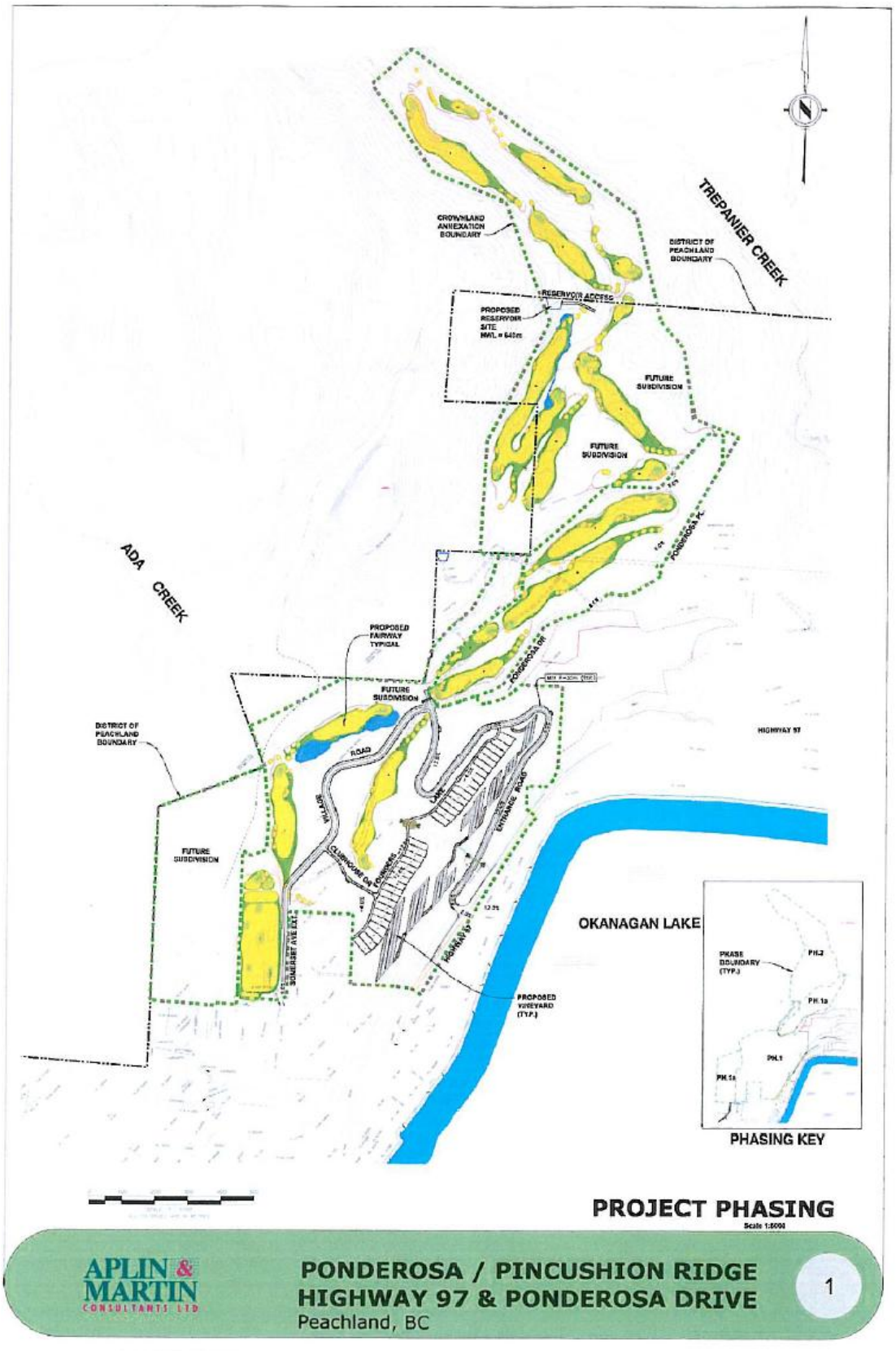
drawing title
Appendix 1
Zoning Map

drawn K.F. | checked RPB | date 2010-08-10

scale N/A | figure no. Appendix 1

NEW TOWN
ARCHITECTURE
URBAN PLANNING
1450 PANDOSY STREET
KELOWNA, BC V1Y 1P3
P: 250-860-8185
F: 250-860-0985
www.newtownservices.net

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



**SCHEDULE "F"**
**(To Phased Development Agreement)**
**PARK AND TRAIL PLAN**

**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 and 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/13$^{th}$ 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.