

**SCHEDULE D**

**SUBDIVISION AND DEVELOPMENT CONTROL BYLAW NO. 2212, 2012**

**SERVICING AGREEMENT**

**THIS AGREEMENT** made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

**BETWEEN:**            **DISTRICT OF SQUAMISH**, a district incorporated under the *Local Government Act* of British Columbia, and having its Municipal Offices at P.O. Box 310, 37955, Second Avenue, Squamish, B.C. V0N 3G0

(hereinafter called the District)

**OF THE FIRST PART**

**AND:**

(hereinafter called the Developer)

**OF THE SECOND PART**

**WHEREAS:**

- A.        The Developer is the registered Owner of lands within the District of Squamish in the Province of British Columbia, more particularly known and described as follows:

(hereinafter called the Lands)

- B.        The Developer desires to subdivide the Lands or develop the Lands.
- C.        The Approving Officer of the District has agreed to approve the building permit or development of the Lands subject to the terms and conditions contained in this Agreement and the posting with the District of the Security Deposit described herein.
- D.        The Developer has requested approval of the building permit or development prior to the construction and installation of the Works in their entirety and is agreeable to entering into this Agreement pursuant to the Local Government Act and the Developer will deposit the Security Deposit specified by this Agreement;

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of the promises, covenants and agreements hereinafter set forth, the parties hereto covenant, agree, represent and promise as follows:

**APPENDICES:**

1. The following Appendices form part of this Agreement:
  - a) Appendix "A" -A list of the Works & Services and the Municipal Engineer's estimate of their respective construction costs.
  - b) Appendix "B" -Construction drawings to be used for the construction of the Works & Services.
  - c) Appendix "C" – A copy of the subdivision plan of the Lands or of the Building Permit application.

**DEVELOPER  
TO DO WORK**

1. The Developer covenants and agrees to construct, install and provide all the Works & Services listed and shown on Appendices A and B hereto, as approved by the District, in accordance with the standards contained in the District's

Subdivision and Development Control Bylaw (hereinafter called the Bylaw). The Developer shall from time to time and at all times so long as it exercises any rights of ownership in the said Lands upon the request of the District, and to the satisfaction of the District make, do and execute or cause or procure to be made, done and executed, all such further acts, deeds, rights-of-ways, covenants, easements and assurances in favour of the District as are required for the more effectual carrying out of this Agreement.

**TRANSFER  
OF INTEREST IN WORKS**

2. The Developer covenants and agrees with the District to assign, transfer and convey to the District all of its right, title and interest in the Works & Services on any and all of the Lands, upon or in which the Works & Services are situated, upon the completion of the Works & Services, (as witnessed by the issuance of a Certificate of Substantial Completion). The Developer will from time to time and at all times so long as it exercises any rights of ownership in the said Lands upon the request of the District, make, do and execute or cause or procure to be made, done and executed, all such further acts, deeds, rights-of-ways, covenants, easements and easements assurances in favour of the District as are required for the more effectual carrying out of this Agreement.

**PERMISSION TO DO WORK**

3. The District covenants and agrees to permit the Developer to construct the Works & Services, on the terms and conditions herein, and in the manner required by and at the places specified in the Plans and Specifications in Appendix B; provided that nothing in this Agreement shall be construed as an undertaking, promise or covenant on the part of the District to make available the use of or access to the Works & Services for any purpose, and without limiting the foregoing, for the purpose of serving the Lands or any other real property whatsoever either Owner or controlled by the Developer or its associates or otherwise, but rather the District reserves the right in its sole and absolute discretion to make available, operate, alter, use, extend, diminish, discontinue, tear up, sell, rent or otherwise dispose of the Works as its Council from time to time deems fit.

**CHANGES TO THE BYLAW**

4. The Developer covenants and agrees to comply with any changes in subdivision requirements or standards enacted by Bylaw prior to the actual commencement upon the Lands of the Works contemplated by this Agreement.

**START OF WORK**

5. The Developer covenants and agrees not to commence work until the Approving Officer provides the Developer with written permission to proceed with construction in the form provided in Schedule E of this Bylaw.

**COMPLETION TO DO WORK**

6. The Developer shall complete the construction of the Works & Services, specified in Appendices "A" and "B" to the satisfaction of the District, within one (1) year from the date of this Agreement.

**DEVELOPER TO GRANT  
RIGHTS-OF-WAY**

7. The Developer shall grant to the District all necessary road dedications, statutory rights-of-way and easements over the said Lands (in conformity with the District's standard form documents) to accommodate the said Works & Services and, where the said Works & Services are located upon or under privately owned lands other than the said Lands, to obtain at the Developer's expense, all necessary road dedications, statutory rights-of-way and easements over such Lands, in favour of the District where applicable, to accommodate the said Works & Services, and to register the dedications, right of ways and easements in the Land Title Office.

**DESIGN**

8. The Developer covenants and agrees that all works required herein shall be designed by a Professional Engineer, who shall be registered with the Association of Professional Engineers and Geoscientists of British Columbia and retained by the Developer. Plans and specifications for the said works shall be prepared by or under the direct supervision of the said Professional Engineer and all plans shall bear his professional seal and signature.

**INSPECTION**

9. The Developer covenants and agrees to retain a Professional Engineer during the construction period for the purposes of inspection to ensure compliance with the approved design and to provide certification of the as-built records and to perform other duties all in accordance with the Bylaw.

**ENGINEERING DRAWINGS**

10. The Developer covenants and agrees that the intent of this Agreement is that the Developer shall construct fully completed Works & Services, and grant all necessary dedications, rights of way and easements as shown in the following plans and specifications prepared by :

Under drawing numbers:

And as received for the purposes of this agreement by the District on the \_\_\_\_\_.

**DESIGN CHANGES**

11. The Approving Officer or District's Agent may alter the plans because of conditions on site so that the works function and operate in a manner satisfactory to the Approving Officer or District's Agent. Should the works, as provided herein, prove to be in any way defective or should they not operate to the satisfaction of the Approving Officer or District's Agent, then the Developer shall, at his own expense modify and reconstruct the works so that the works shall be fully operative and function to the satisfaction of the Approving Officer or District's Agent.

**SUBSTANTIAL  
COMPLETION**

12. A Certificate of Substantial Completion shall be provided by the District's Agent on the completion of the construction listing all the deficiencies. This letter of Substantial Completion shall not be construed as acceptance of the Works & Services. Substantial Completion is defined by MMCD.

**“AS-BUILT” SUBMISSION**

13. The Developer covenants and agrees to submit to the District the final "As-Built" drawings and records of construction, and test results, as accepted by the District's Agent as identified in Schedule A, Section 2.6.4 of the Bylaw prior to issuing a Certificate of Substantial Completion.

**MAINTENANCE PERIOD  
AND RESPONSIBILITY**

14. The Developer covenants and agrees to maintain every part of the Works & Services in good order and in complete repair for a period of one (1) year from the date shown on the Certificate of Substantial Completion.

Should the Developer fail to maintain the Works, then the District's Agent, at its option, after giving the Developer seven (7) days written notice (emergencies excepted), may do so, and the whole costs, charges and expenses so incurred by the District will be payable by the Developer, as provided for herein. The decision of the District's Agent will be final with respect to the necessity for repairs, or the adequacy of any work done.

Once any Works covered by this Agreement are connected to the District's infrastructure, only District crews or Contractors under the direct supervision of the District may undertake work on such District infrastructure. As such, District crews or contractors retained by the District may correct any defects, imperfections, settlements and/or re-chlorination and flushing which is deemed by the District's Agent to be necessary during the one (1) year period from the date shown on the Certificate of Substantial Completion and the whole of such costs, charges and expenses so incurred by the District in undertaking such work including but not limited to contractor costs will be payable by the Developer as provided for herein.

**CERTIFICATE OF  
ACCEPTANCE**

15. The District covenants and agrees that upon satisfactory completion by the Developer of all of the covenants and conditions in this Agreement, including the maintenance of the Works & Services in complete repair for a period of one (1) year, to provide the Developer with a Final Acceptance Certificate of the Works & Services, signed by the District's Agent. Notice of Acceptance of the Works & Services will be issued by the District's Agent when all deficiencies have been corrected, as-built drawings and service record cards received, and the maintenance period outlined herein has expired. The maintenance and repair of all such Works & Services remain the responsibility of the Developer until the Final Acceptance Certificate for the Works & Services has been issued.

**DEVELOPER INDEMNIFIES  
DISTRICT**

16. The Developer covenants and agrees to save harmless and effectually indemnify the District against:
- a) all actions and proceedings, costs, damages, expenses, claims, and demands whatsoever and by whomsoever brought by reason of the construction, installation, maintenance or repair of the Works & Services provided by the Developer;

- b) all expenses and costs which may be incurred by reason of the construction, installation, maintenance or repair of the Works & Services resulting in damage to any property owned in whole or in part by the District for which the District by duty or custom is obliged, directly or indirectly, in any way or to any degree, to construct, install, maintain or repair;
- c) all expenses and costs which may be incurred by reason of liens for non-payment of labour or materials, Workers Compensation, Unemployment Insurance, Federal or Provincial tax, check -off or encroachments owing to mistakes in survey;
- d) all expenses and costs which may be incurred by the District as a result of faulty workmanship and defective material in any of the Works & Services installed by the Developer.
- e) The above clauses shall not be construed as to extinguish any rights which the District would have were it not for the inclusion of Clause 16 in this Agreement.

**INSURANCE BY  
DEVELOPER**

17. The Developer will at its sole expense throughout the term of this Agreement until the District has accepted the Works & Services under Clause 15 carry Comprehensive Liability Insurance acceptable to the District in the amount of at least Five Million Dollars (\$5,000,000) with insurance companies licensed to carry on business in the Province of British Columbia in partial discharge of its obligation under Clause 16 (a), (b), (c) and (d)

**INSURANCE COVERAGE**

18. The Developer covenants and agrees to provide the following insurance coverage, and to provide the District with a copy of the insurance policy prior to the commencement of any construction of the Works & Services:
- a) To protect the Developer and the District against all claims arising out of:
    - i. Death or injury to persons; and
    - ii. Damage to or loss of, any property of third persons, including without limiting the foregoing; the following classes of property: Real property, chattels, land, works, buildings, structures, wires, boilers and pressure vessels, conduits, pipes, mains, shafts, sewers, tunnels, and apparatus in connection therewith, even when the damage or loss of use is caused by vibration, moving, shoring, underpinning, raising, rebuilding or demolition of any building, structure or support, or by excavation, tunneling or other work below the surface of the ground or water; and
    - iii. Damage to or loss of all building, structures, stores, equipment and materials included in or required to the carrying out of the Works.

- b) Every policy of insurance required will:
  - i. Name "The District of Squamish" and its Agents or Contracted Employees as additional insured; and
  - ii. State that the policy applies to each insured in the same manner and to the same extent as if a separate policy had been issued to each insured; and
  - iii. State that the policy cannot be cancelled, lapsed or materially changed without at least thirty (30) days written notice to the District, delivered to the District of Squamish clerk.

#### **SECURITY DEPOSIT**

19. As security for the due performance of all of the covenants and promises contained in this Agreement the Developer has concurrently with the execution of this Agreement deposited 120% of estimated cost of the Works and Services, in the amount of \$\_\_\_\_\_ as determined by the cost estimate of the Engineer and as attached as Appendix A , in the form of cash or a Letter of Credit acceptable to the District (herein called the Security Deposit).

#### **FORFEIT OF SECURITY DEPOSIT**

20. In the event that the Developer fails to construct and install the Works & Services prescribed herein within the time specified in Clause 7, the said Security Deposit will be forfeited to the District.

The Developer shall be deemed to be in default of this Agreement if the Developer files a voluntary petition of bankruptcy, or is adjudicated bankrupt or insolvent, or files any petition or answer seeking any reorganization, arrangement, liquidation, dissolution or similar under any enactment respecting bankruptcy, insolvency or other relief for debtors.

#### **USE OF SECURITY DEPOSIT**

21. If the Developer is in default of any of its obligations in respect to the construction and installation or maintenance of the Works & Services or any portion thereof, the District may cash the Security Deposit to secure completion or maintenance of all or a portion of the Works & Services in compliance with the terms of this Agreement and any payment obligations of the Developer in respect of the Works & Services that remain unpaid including the discharge of any builders' liens, and such monies shall be applied to remedy the default and complete all or any portion of the Works & Services and to satisfy the Developers warranties in respect of same in place and stead of the Developer and ensure compliance with the terms of this Agreement. In addition the District may cash, retain and use the Security Deposit to remedy any emergency condition which, in the sole opinion of the Municipal Engineer, is associated with, arises from or is a result of the Works and Services and requires expedient action. Despite the foregoing, the District may cash, retain or use the Security Deposit to pay, settle or compromise any claim against the District for which the Developer indemnified the District pursuant to Clause 16. If the proceeds from the Security Deposit is not sufficient to pay all costs and expenses incurred by the District in completing or

maintaining all or a portion of the Works & Services including the District's normal overhead charges and satisfying the warranties thereof, curing other default by the Developer, or satisfying any amounts owing to the District pursuant to Clause 16 the Developer shall forthwith pay to the District the difference upon receipt from the District of invoices for the same together with all interest thereon at the commercial prime rate of interest plus two percent from the date of receipt by the Developer of the invoices for the same and continuing until payment in full. The amount required to be paid by the Developer is a debt owing to the District, and may be collected in the same manner as taxes.

**RELEASE OF SECURITY  
DEPOSIT, MAINTENANCE  
HOLDBACK**

22. If the District's Agent is of the opinion that the Works & Services or any portion thereof have been adequately completed and the Developer's covenants performed in compliance with this Agreement, and if there is no litigation pending by any third party against the District as a result of, or arising from, the construction of the Works & Services, the District's Agent shall be authorized to return all, or any portion of the Security Deposit to the Developer at such times and in such amounts as he may deem proper but in no case shall be more frequently than once per month, provided that he will retain an amount equal to 10% of any released funds for a total of 10% of the total Security Deposit at the completion of the project to secure the performance of the maintenance required of the Developer (hereinafter called the Maintenance Holdback).

**RELEASE OF  
MAINTENANCE HOLDBACK**

23. Upon expiration of the maintenance period outlined in Clause 15 and provided that the District's Agent is satisfied that the Developer has complied with the covenants contained in this agreement and if there is no litigation pending by any third party against the District as a result of, or arising from, the construction of the Works & Services, the District's Agent be authorized to return the Maintenance Security Deposit to the

Developer and thereafter the Developer's responsibility for the Works & Services shall cease.

**INSPECTION &  
ADMINISTRATION FEE**

24. The Developer covenants and agrees to pay to the District an Inspection and Administration non-refundable fee in the amount of \$\_\_\_\_\_ to cover District administration, inspection and processing costs. This fee is payable prior to the execution of this Agreement by the District and shall be calculated using a summation of the following and relative to the Security Deposit amount and in no case shall be less than \$2,500:

3% of the first \$500,000 of estimated costs of the Works & Services under Appendix A.  
2% of the second \$500,000 of estimated costs of the Works & Services under Appendix A.  
1% of the balance.



**NO OTHER  
REPRESENTATIONS**

25. It is understood and agreed that the District has made no representations, covenants, warranties, guarantees, promises or agreements (verbal or otherwise) with the Developer other than those in this agreement.

**NO WAIVER**

26. The Developer covenants and agrees that nothing contained or implied herein shall prejudice or affect the rights and powers of the District in the exercise of its functions under any public and private statutes, bylaws, orders and regulations, all of which may be fully and effectively exercised in relation to the said Lands as if the Agreement had not been executed and delivered by the Developer.

**SOLE COST**

27. Every obligation of the Developer under this Agreement shall be performed by the Developer at its sole cost.

**WHENEVER** the words "will" and "shall" are used in this Agreement it will be construed as imperative (mandatory).

**WHENEVER** the singular or the masculine is used in the Agreement it will be construed as meaning the plural or the feminine or body corporate or politic where the context or the parties hereto so require.

**THIS CONTRACT** shall enure to the benefit of and be binding upon the parties hereto, their respective successors and assigns.

**IN WITNESS WHEREOF** the parties hereto have executed this contract the day and year first above written

**SIGNED, SEALED AND DELIVERED**

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**SIGNED, SEALED AND DELIVERED**

The Corporate Seal of the District of Squamish was hereunto affixed  
in the presence of:

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**MAYOR**

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**ADMINISTRATOR**