

DISTRICT OF SQUAMISH

BYLAW NO. 2404, 2015

A bylaw to enter into a municipal share agreement for peninsula main road works.

WHEREAS sections 3, 6(1), 7 and 8(1) of the *Community Charter* S.B.C. 2003, c. 26 authorize the District to enter into a municipal share agreement and to make payments pursuant to it;

AND WHEREAS the District wishes to enter into a municipal share agreement with the owner of the lands (the "Lands") as described in Schedule "A" of Appendix "I" to this Bylaw, in relation to the peninsula main road works designated for the purposes of District of Squamish Development Cost Charge Bylaw No. 2265, 2015 in respect of the Lands;

NOW THEREFORE the Council of the District of Squamish in open meeting assembled enacts as follows:

1. This Bylaw may be cited as "District of Squamish Municipal Share (Peninsula Main Road) Agreement Authorization Bylaw No. 2404, 2015".
2. The District enters into, and the Mayor and the Corporate Officer are authorized to execute and deliver, the Agreement attached to and forming part of this Bylaw as Appendix "1".

READ A FIRST TIME this 8th day of September, 2015.

READ A SECOND TIME this 8th day of September, 2015.

READ A THIRD TIME this 13th day of September, 2015.

ADOPTED this 15th day of September, 2015.

Patricia Heintzman, Mayor

Robin Arthurs, Corporate Officer

Appendix "1"
DISTRICT OF SQUAMISH

MUNICIPAL SHARE AGREEMENT – PENINSULA MAIN ROAD

THIS AGREEMENT dated for reference the _____ day of _____, 2015.

BETWEEN:

DISTRICT OF SQUAMISH

37955 2nd Avenue
Squamish, BC V8B 0A3

(the “**District**”)

AND:

0983016 BC LTD.

401 – 37989 Cleveland Avenue
PO Box 1068/
Squamish, BC V8B 0A7

(the “**Developer**”)

WHEREAS:

Greater District Objective

- A. The District wishes to advance the economic, social and environmental interests of the municipality through the revitalization and redevelopment of the Squamish oceanfront peninsula, a 104 acre site, comprising 69 acres of land and 35 acres of marine area that is:
- immediately adjacent to Squamish’s historic downtown, and surrounded on three sides by water and on all sides by dramatic vistas of the Howe Sound, Garibaldi Range, Shannon Falls and the Stawamus Chief, and
 - significant portions of which were formerly the subject of extensive pulp and paper, shipping and other industrial uses;

Official Community Plan (Area Plan)

- B. In 2010, following a lengthy and extensive planning process, and in light of:
- the access to the ocean that the land provides for all Squamish residents,
 - its importance to downtown revitalization, and
 - its available deep water access,

Squamish Council adopted a bylaw to guide the future development of the area, being the Squamish Oceanfront Peninsula Sub Area Plan;

- C. That Plan envisions substantial development on the peninsula, including approximately 6,500 residents, and total direct employment of more than 2,300 jobs, at build out;

Associated Infrastructure

- D. In conjunction with and following the above planning process, the District examined the infrastructure works required for the Squamish oceanfront development, and in the course of doing so determined that the needed works include substantial geotechnical, flood proofing, road, water, sanitary sewer, storm sewer and other works, the projected cost of which is:

- more than roughly \$74.36 million on the peninsula alone, and
- more than roughly \$34.25 million in related off-site works.

Those works included roughly \$55 million in flood protection, shoreline and related geotechnical works, remediation work and site preparation, that would need to be very advanced before any return from development could be achieved;

- E. The District also undertook significant work in developing a development cost charge program that would be applicable to both:
 - the development of the Squamish oceanfront (with approximately \$34.25 million of the works associated with the project being designated as development cost charge works); and
 - other development across Squamish as a whole,

and which culminated in the preparation of a draft amendment to its development cost charge bylaw in March 2012;

Zoning

- F. The District also undertook significant work regarding the detailed land use regulations that would apply, through the development of a comprehensive development zone for the Squamish oceanfront lands, and a bylaw amendment to which Squamish Council gave two readings in October 2011;
- G. That zoning bylaw amendment contemplates the creation of close to 10 acres of new peninsula land, and provides for:
 - 21.2 acres of parks, public space and community facilities;
 - 18.7 acres of residential use;
 - 29.4 acres of employment generating uses; and

- 34.4 acres of marine uses;

District Search for Proponent

- H. The District then undertook an extensive search for potential proponents for the development of the portion of the Squamish oceanfront project owned by the District, on a basis that would allow the District to select the best available developer to deliver the community's vision for the area;
- I. In doing so, the District indicated that in the absence of the other two owners on the peninsula being ready or able to proceed, it anticipated proceeding on a basis that would:
 - make significant use of community amenity contribution, latecomer and other mechanisms, and
 - involve an expanded role for development cost charges;

Selection of Proponent, and Entering Into of a Memorandum of Understanding

- J. The District's search resulted in the selection of the Developer as the proposed proponent, and the District then commenced negotiations with the Developer in October 2013;
- K. Those negotiations subsequently resulted in a non-binding Memorandum of Understanding in July 2014 which contemplated the subsequent entering into of various Agreements, including a development cost charge frontender agreement, community amenity contribution frontender agreement and the adoption of various bylaws and policies;
- L. The District has since decided not to proceed with a community amenity contribution agreement. It has however indicated that it is prepared to enter into the Agreement provided for herein;

Purchase and Sale Agreement

- M. The District has agreed, subject to various conditions, to sell to the Developer those certain Squamish Oceanfront Lands owned by the District, which comprise both land and marine areas, as set out in Schedule "A" hereto (the "**Squamish Oceanfront Lands**").

Development Cost Charge Bylaw

- N. The District recently amended its development cost charge bylaw, by way of Development Cost Charge Bylaw No. 2265, 2015, which bylaw has been approved by the Provincial Inspector of Municipalities;

Main Road Work

- O. The works that are the subject of the development cost charge bylaw as amended include approximately 31% of the R-20 Peninsula Main Road that is:

- described in Schedule “B” hereto;
- the cost of which is estimated in Schedule “B” hereto;
- the “municipal share” of the cost of which is estimated in Schedule “B” hereto, and

being that portion described in the Subdivision Servicing Covenant that is attached at Schedule “C” hereto,

(the “Main Road Work”).

“Non growth” and “municipal assist” portion of DCCs

- P. The *Local Government Act* enables DCC’s to be used to provide “funds to assist the local government to pay the capital cost” of servicing growth. DCC rates to development are based on considerations mandated by the *Local Government Act*, which include such factors as:
- Future land use patterns and development
 - Phasing of works and services
 - Provision of park land described in an official community plan
 - How development designed to result in a low environmental impact may affect the capital costs of infrastructure
 - Whether the charges are excessive in relation to the cost of prevailing standards of service
 - Whether the charges will deter development
 - Whether the charges will discourage the construction of reasonably priced housing or serviced land
 - Whether the charges will discourage development designed to result in a low environmental impact;
- Q. DCC’s cannot be used to fund 100 per cent of the cost of the works included within a DCC Bylaw, and that the District must pay the “non-growth share” and “municipal assist” portion of the DCC work that does not relate to growth from sources other than the imposition of DCCs on development applicants;
- R. The “non-growth” and “municipal assist” share of the Main Road Work is that portion of the \$2.54 million estimated cost of the Main Road Work that is not recoverable by the District from development applications, being an estimated total of approximately \$1.38 million, as recorded in Schedule B hereto;

Limited Partnership

- S. The Developer is the General Partner of Newport Beach Developments Limited Partnership, and enters this Agreement on behalf of the Limited Partnership;

Council Determination

- T. In order to advance the economic, social and environmental interests of the municipality, as outlined above, the District agrees that in the event that if the Developer proceeds with the

construction of the Main Road Work as provided herein, the District will pay the Developer the “non-growth” share of the cost of the Main Road Work on the basis set out in this Agreement; and

- U. Council adopted a bylaw on _____, 2015, pursuant to, *inter alia*, sections 3, 6(1), 7, and 8(1) of the *Community Charter*, R.S.B.C. 2003, c. 26 to authorize the District to enter into this Municipal Share Agreement and to make the payments provided for herein.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the sum of TEN (\$10.00) DOLLARS of lawful money of Canada and other good and valuable consideration now paid by each of the parties hereto, to each of the other parties hereto, the receipt whereof is hereby acknowledged, the parties hereto hereby covenant, promise and agree with each other as follows:

1. DEFINITIONS

1.1 In this Agreement, the terms defined above have the meanings set out above, and in addition:

- (a) **“Act”** means the *Local Government Act*, R.S.B.C. 1996, c. 323, as revised, re-enacted or consolidated from time to time and any successor statute.
- (b) **“Agreement”** means this agreement and all Schedules attached hereto.
- (c) **“Council”** means the elected Council of the District.
- (d) **“Development Cost Charge”** or **“DCC”** means a charge imposed pursuant to the DCC Bylaw.
- (e) **“DCC Bylaw”** means District of Squamish Development Cost Charge Bylaw No. 2265, 2015.
- (f) **“Main Road Work”** has the meaning set out at Recital O hereof.
- (g) **“DCC Frontender Agreement”** means the agreement entered into by the parties, having a reference date of _____, 2015, pursuant to which the District agreed, subject to DCC credits and rebates owing to the Developer in accordance with the *Local Government Act*, to reimburse the Developer for the “growth” portion of the cost of completed DCC Construction Works covered by the DCC Bylaw.
- (h) **“Lands”** means Lots 1 through Lot 9 shown on the plan of subdivision attached hereto as Schedule “A”.
- (i) **“Municipal Share”** means the “non-growth” and “municipal assist” portions of the cost of the Main Road Work, set out as the “Estimated Municipal Cost” in Schedule B to this Agreement.
- (j) **“Squamish Oceanfront Lands”** means the lands described in Schedule “A” to this Agreement.

- (k) **“Subdivision Servicing Agreement”** means that certain agreement attached hereto as Schedule “C”.
- (l) **“Term”** means the period of time this Agreement is in effect, being 5 years less one day from the date of execution of this Agreement.

2. LIABILITY FOR MUNICIPAL SHARE OF MAIN ROAD WORK

2.1 In the event that the Developer:

- (a) enters into the Subdivision Servicing Agreement with the District and provides security for the construction of the Main Road Work to the extent that funds in a DCC Reserve Fund are not available under the DCC Frontender Agreement to pay for the cost of the Main Road Work; and
- (b) constructs and installs the Main Road Work in accordance with the Subdivision Servicing Agreement;

then the District will pay the Developer the “Municipal Share” of the cost of the Main Road Work, as further provided at sections 3.1 through 3.5 hereof.

3. PAYMENT OF NON-GROWTH SHARE OF THE COST OF THE MAIN ROAD WORK, IN THE EVENT OF LIABILITY

3.1 Subject to sections 3.2 and 3.3 hereof, the District will reimburse the Developer for the construction of the Main Road Work that the Developer constructs or proceeds to construct on the Lands in accordance with section 2.1, by paying the Developer an amount equal to the cost of the work certified by a registered professional engineer, less any amount the Developer is eligible to recover for the work under the DCC Frontender Agreement, within 30 days of the date when the registered professional engineer certifies:

- (a) the completion of the Main Road Work in accordance with the Subdivision Servicing Agreement; and
- (b) the cost of the Main Road Work.

3.2 Notwithstanding section 3.1 hereof:

- (a) the District will only be responsible to reimburse the Developer in respect of the construction of the Main Road Work if and to the extent that the Developer incurs costs in connection with the construction of the Main Road Work;
- (b) the amount of money payable to the Developer for the cost of constructing the Main Road Work will be the capital cost of same (including all design and engineering costs) incurred by the Developer, net of any and all DCC credits and rebates or other DCC monies received by the Developer in connection with the Main Road Work;

- (c) design, engineering and construction costs of Main Road Work, if the works are designed, engineered and constructed by the Developer, will be reimbursed to the extent the design, engineering and construction costs:
 - (i) are comparable with similar costs for similar infrastructure projects in similar locations; and
 - (ii) reflect the calculations under which the DCC Bylaw was based;
 - (d) the District will only be responsible to reimburse the Developer in respect of the construction of a Main Road Work if and to the extent that the Developer delivers to the District written evidence satisfactory to the District's Director of Engineering, acting reasonably, of the cost of the work; and
 - (e) notwithstanding any other provision of this Agreement, the maximum potential cost recovery by the Developer under this Agreement is \$1,380,000.
- 3.3 Notwithstanding sections 3.1 and 3.2 hereof at the expiry of the Term the obligations of both parties will be at an end, and no further monies will be payable by the District to the Developer pursuant to this Agreement, except to the extent that such monies had become due and owing by the District under this Agreement prior to the expiry of the Term of this Agreement.
- 3.4 The Developer's obligation to construct the Main Road Work is not limited by or to the "estimated cost" set out in Schedule "B".
- 3.5 The District will pay the Developer at the address of the Developer as set forth in section 4.1(a) or at such other address as the Developer will provide by registered mail. If the said payments are returned to the District unclaimed by the Developer, and if the District is unable to locate the Developer before the expiry of the Term after all reasonable efforts, then the District will hold all monies collected until the expiry of the Term. After the expiry of the Term the District will retain such unclaimed funds forever.

4. NOTICES

- 4.1 Any notice, demand, acceptance or request required to be given hereunder in writing will be deemed to be given if either personally delivered or mailed by registered mail, postage prepaid (at any time other than during a general discontinuance of postal services due to a strike, lockout or otherwise) and addressed to:
- (a) The Developer is as follows:

0983016 B.C. Ltd.
401 – 37989 Cleveland Avenue
Squamish, BC
Attention: Michael Hutchison

or such change of address as the Developer has, by written notification, forwarded to the District, and

- (b) The District as follows

District of Squamish
37955 2nd Avenue
Squamish, BC
Attention: General Manager of Development Services and Public Works

or such change of address as the District has, by written notification, forwarded to the Developer.

- 4.2 Any notice will be deemed to have been given to and received by the party to which it is addressed:

- (a) if delivered, on the date of delivery; or
(b) if mailed, then on the fifth (5th) day after the mailing thereof.

5. BINDING ON SUCCESSORS

- 5.1 It is agreed by and between the parties hereto that this Agreement will be enforceable by and against the parties, and their successors and assigns.
- 5.2 The Developer will not assign or transfer its interest in this Agreement without the prior written consent of the District, which consent will not be withheld by the District unless the proposed assignee is in bankruptcy or receivership.
- 5.3 In the event of the assignment or transfer of the rights of the Developer voluntarily, or by operation of law, the District will pay any benefits accruing hereunder, after notice, to the successor of the Developer, and in the event of conflicting demands being made upon the District for benefits accruing under this Agreement, then the District may at its option commence an action in interpleader joining any party claiming rights under the Agreement, or other parties which the District believes to be necessary or proper, and the District will be discharged from further liability upon paying the person or persons whom any Court having jurisdiction of such interpleaded action will determine.

6. ENTIRE AGREEMENT

- 6.1 This Agreement constitutes the entire agreement between the parties hereto with respect to the municipal share of the cost of the Main Road Work, and supersedes any prior agreements, undertakings, declarations or representations, written or verbal, in respect thereof.
- 6.2 For greater certainty, the Developer shall not recover more for constructing the Main Road Work under this Agreement and the DCC Frontender Agreement than the Main Road Work costs the Developer.

7. LAWS OF BRITISH COLUMBIA

- 7.1 This Agreement will be interpreted under and is governed by the applicable laws of Canada and the Province of British Columbia.

8. SEVERABILITY

- 8.1 If any part of this Agreement is held to be invalid, illegal or unenforceable by a Court having the jurisdiction to do so, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that holding or by the severance of that part.
- 8.2 In the event that this Agreement in its entirety is held to be invalid, illegal or unenforceable by a Court having jurisdiction to do so, then this Agreement shall be severed from any other Agreement entered into between the District and the Developer, and all other Agreements entered into between the District and the Developer shall remain in force unaffected by that holding or by the severance of this Agreement.

9. TIME IS OF ESSENCE

- 9.1 Time is of the essence of this Agreement.
- 9.2 No provision of this Agreement is to be considered to have been waived by a party unless the waiver is expressed in writing by the party. The waiver by a party of any breach by another party of any provision is not to be construed as or constitute a waiver of any further or other breach.

10. INTERPRETATION

- 10.1 In this Agreement:
- (a) the headings and captions 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;
 - (b) 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 items or matters that could reasonably fall within its scope;
 - (c) a reference to currency means Canadian currency;
 - (d) a reference to time or date is to the local time or date in Squamish, British Columbia;
 - (e) a word importing the masculine gender includes the feminine or neuter, and a word importing the singular includes the plural and vice versa;
 - (f) 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;
 - (g) a reference to approval, authorization, consent, designation, waiver or notice means written approval, authorization, consent, designation, waiver or notice; and

- (h) a reference to a section means a section of this Agreement, unless a specific reference is provided to a statute.

11. EXECUTION AND DELIVERY

- 11.1 This Agreement may be executed in counterpart and such counterparts together shall constitute a single instrument. Delivery of an executed counterpart of this Agreement by electronic means, including by facsimile transmission or by electronic delivery in portable document format (".pdf"), shall be equally effective as delivery of a manually executed counterpart hereof.
- 11.2 The Parties acknowledge and agree that in any legal proceedings between them respecting or in any way relating to this Agreement, each waives the right to raise any defense based on the execution hereof in counterparts or the delivery of such executed counterparts by electronic means.

12. SCHEDULES

- 12.1 The Schedules attached hereto, which form part of this Agreement, are as follows:
- (a) Schedule "A" – Squamish Oceanfront Lands;
 - (b) Schedule "B" – Description of the Main Road Work, including estimated cost and Estimated Municipal Share; and
 - (c) Schedule "C" – Subdivision Servicing Agreement.

WITNESS WHEREOF this Agreement has been executed as of the day and year first above written.

DISTRICT OF SQUAMISH

By its authorized signatories

Mayor

Corporate Officer

0983016 B.C. LTD.

by its authorized signatory

Name:

SCHEDULE "A"

SQUAMISH OCEANFRONT LANDS

PRECINCT SUBDIVISION PLAN

PROPOSED SUBDIVISION PLAN OF:

- (1) LOT 1, DISTRICT LOT 486, PLAN BCP16860;
 - (2) LOT 2, DISTRICT LOT 486, PLAN BCP16860;
 - (3) LOT 1, DISTRICT LOT 4271, PLAN BCP16861;
 - (4) LOT 2, DISTRICT LOT 4271, PLAN BCP16861;
 - (5) LOT 3, DISTRICT LOT 4271, PLAN BCP16861;
 - (6) LOTS 1, 2 AND 3, DISTRICT LOT 486, PLAN BCP16863;
 - (7) LOT 6, DISTRICT LOTS 486, 4271, 4618, 5717, 6042 AND 7134, PLAN 14953;
 - (8) BLOCK B, DISTRICT LOTS 4618, 5717, 6042 AND 7134, PLAN 13452;
 - (9) LOT 6, BLOCK 1, DISTRICT LOTS 486 AND 4271, PLAN 14521;
 - (10) DISTRICT LOT 5717, EXCEPT PORTIONS IN PLANS 13452 AND 14953;
 - (11) DISTRICT LOT 6042, EXCEPT PART IN PLAN 13452;
- ALL OF GROUP 1, NEW WESTMINSTER DISTRICT.**

As shown for any of the lots, a reference to a lot number is made, also shown as a note of 1000.

As shown for any of the lots, a reference to a lot number is made, also shown as a note of 1000.



AREAS

LOT 1 = 3.68 hectares (9.1 acres)
 LOT 2 = 4.03 hectares (10.1 acres)
 LOT 3 = 3.87 hectares (9.6 acres)
 LOT 4 = 7.41 hectares (18.3 acres)
 LOT 5 = 9.21 hectares (22.7 acres)
 LOT 6 = 1.33 hectares (3.3 acres)
 LOT 7 = 1.28 hectares (3.2 acres)
 LOT 8 = 1.15 hectares (2.8 acres)
 LOT 9 = 2.82 hectares (7.0 acres)

PARK = 5.56 hectares (13.7 acres)
 ROAD = 2.05 hectares (5.1 acres)

TOTAL = 42.45 hectares (104.9 acres)

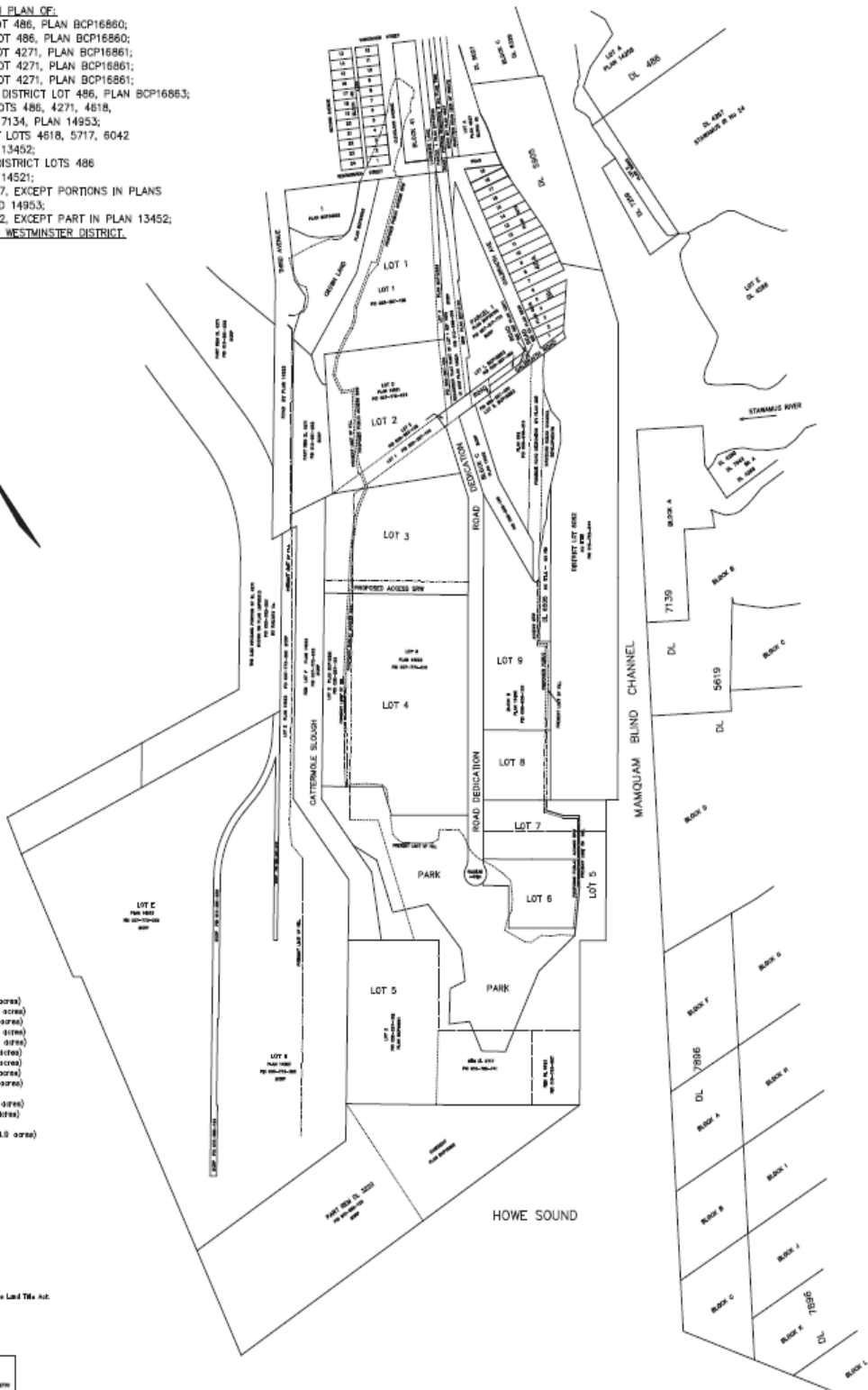
Lands are subject to section 100 of the Land Title Act.

Final lot configurations may vary upon completion of a legal survey.

May 4, 2010

BUNBURY & ASSOCIATES
 4010-100th Ave. Suite 100
 Burnaby, BC V5N 3K1
 Tel: 604-439-2000 Fax: 604-439-2001

PLS No. 2010-036314



Schedule "B"

DESCRIPTION OF MAIN ROAD WORK, INCLUDING ESTIMATED COST

Item	Type of Works	Works Description	Estimated Municipal Cost \$M	Estimated Cost \$M
29	Roads	31 % of R-20 Peninsula Main Road - Arterial standard	1.38	2.54

Schedule "C"

Subdivision Servicing Agreement [from Phased Development Agreement]

[inserted, being the same Subdivision Servicing Agreement that is the subject of the Phased Development Agreement including Required Infrastructure description which includes the road cross section]

SCHEDULE C SUBDIVISION SERVICING COVENANT

This COVENANT dated for reference the _____ day of _____, 20____.

BETWEEN:

0983016 B.C. Ltd

401 – 37989 Cleveland Avenue
PO Box 1068
Squamish, BC V8B 0A7

(the “**Developer**”)

AND

District of Squamish

37955 Second Avenue
Squamish, BC
V8B 0A3

(the “**District**”)

WHEREAS:

- A. In 2010, following a lengthy and extensive planning process, the District’s Council adopted a bylaw (Bylaw 2157, 2010) that comprised a schedule to the District’s Official Community Plan Bylaw and guide the future development of the Developer’s Land (as defined herein) and other lands in the immediate area, being the Squamish Oceanfront Peninsula Sub Area Plan (the “**Area Plan**”);
- B. The District subsequently agreed to sell the Developer’s Land, as hereinafter defined, to the Newport Beach Developments Limited Partnership, the general partner of which is the Developer and the limited partner of which is the District;
- C. The Developer is therefore now the registered owner of the Developer’s Land, and holds the land in its capacity as general partner of, and on behalf of, the Newport Beach Developments Limited Partnership;
- D. As anticipated by, and subsequent to the adoption of, the Area Plan, the Developer and the District engaged a further more detailed review of land use, infrastructure and other regulatory considerations, and then, following further substantial public input and public hearing processes the District:

- the District adopted District of Squamish Phased Development Agreement Bylaw No. 2387, 2015 (the “**Phased Development Agreement Authorization Bylaw**”) on

_____, 2015 to authorize the entering into of the Phased Development Agreement defined herein;

- the District amended its zoning bylaw on _____, 2015, by way of the enactment of District of Squamish Zoning Amendment Bylaw No. 2386, 2015 (the “**Zoning Amendment Bylaw**”) to allow for the project that was the subject of a Phased Development Agreement; and

- the District on _____, 2015, enacted District of Squamish Subdivision Amendment Bylaw No. 2373, 2015 (the “**Subdivision Amendment Bylaw**”) to allow for the project;

- E. On _____, the District and the Developer entered into a Phased Development Agreement, which established certain terms in connection with the project that is the subject of the Phased Development Agreement;
- F. On _____, the District’s Approving Officer approved the Precinct Subdivision (defined herein) contemplated by the Phased Development Agreement;
- G. Section 219 of the *Land Title Act* provides that the Developer may grant a covenant to the District of a negative or positive nature respecting the use of the Developer’s Land;
- H. In light of the approval of the bylaws referred to above, the approval of the Precinct Subdivision, and the entering into of the Phased Development Agreement, the Developer has agreed to grant this Covenant to restrict the use of the Developer’s Land on the terms and conditions set forth herein;

NOW THEREFORE THIS AGREEMENT WITNESSES that pursuant to Section 219 of the *Land Title Act*, and in consideration of the promises hereby contained, the parties agree as follows:

1. Definitions

In this Agreement:

“**Developer’s Land**” means [“Squamish Oceanfront Lands”, as defined in the Phased Development Agreement, as it stands following subdivision by the Precinct Subdivision], as set out at Appendix “1” to this Agreement;

“**Phased Development Agreement**” means that certain Phased Development Agreement, the body of which, together with Schedules A and C of the Phased Development Agreement, are attached as Appendix “2” to this Agreement;

“Precinct” means a Precinct identified in the Phased Development Agreement;

“Precinct Subdivision” means the Precinct Subdivision contemplated by the phased Development Agreement and approved by the Approving Officer, per the subdivision plan attached at Schedule C to the Phased Development Agreement;

“Release” means a release or discharge sufficient to remove a charge or other interest registered against the title to land at the Land Title Office; and

“Required Infrastructure” means road, water, sanitary sewer, and drainage works as provided for at Appendix “3” to this Agreement.

2. Section 219 Covenant

- (a) Pursuant to Section 219 of the *Land Title Act*, the Developer covenants and agrees with the District that the Developer shall not build on any portion of the Developer’s Land except in compliance herewith;
- (b) The District is not obliged to issue any building permit in respect of the Developer’s Land (or any parcel created therefrom) until the Required Infrastructure has been provided by the Developer, or the District holds security from and a development servicing agreement under section 940 of the *Local Government Act* with the Developer adequate to fund the provision of the Required Infrastructure; and
- (c) Notwithstanding subsection (b), the Developer, subject to the Phased Development Agreement, shall be entitled to build on the Developer’s Land for the purposes of constructing the Required Infrastructure or any other infrastructure related to a subdivision that has been approved by the Approving Officer.

3. Release of Subdivision Servicing Covenant

The District will forthwith provide the Developer with an executed Release of this Section 219 Covenant as regards the Developer’s Land, when the Required Infrastructure:

- (a) has been provided by the Developer, along with a certificate of completion and a certificate of the cost of each work, prepared by the Developer’s professional engineer; or
- (b) the District holds security from the Developer adequate to fund the provision of the Required Infrastructure.

4. Release

The District will provide the Developer with an executed Release of this Section 219 Covenant:

- (a) as against any portion of the Developer’s Land that the District or any

other government authority seeks to acquire by way of expropriation; and

- (b) in its entirety, if the Zoning Amendment Bylaw, the Subdivision Amendment Bylaw, the Phased Development Agreement Authorization Bylaw, or the Phased Development Agreement is quashed or set aside or declared unlawful by a Court of competent jurisdiction.

5. Impact on Market Value

If the District or any other government authority seek to acquire any or all of the land that is subject to this Section 219 Covenant, other than by way of a required dedication or transfer under section 941 of the *Local Government Act*, the price of acquisition and market value of the land will be determined as if this Section 219 Covenant was not registered against it.

6. Run with Lands

This Covenant is granted voluntarily by the Developer to the District pursuant to Section 219 of the *Land Title Act* of the Province of British Columbia and shall run with the lands.

7. Binding Effect

This Covenant shall enure to the benefit of and be binding upon the parties hereto, their respective successors and permitted assigns, provided however that the enforcement of this Covenant shall be entirely within the discretion of the District and the execution and registration of this Covenant against title to the Developer's Land shall not be interpreted as creating any duty on the part of the District to the Developer or to any other person to enforce any provision of the breach of any provision of this Covenant.

8. Further Acts

The Developer and the District shall do all further acts as maybe necessary for carrying out this Covenant, including without limitation execution of all required documents and alterations required to achieve registration at the Land Title Office. The Developer agrees to do everything reasonably necessary, at the Developer's expense, to ensure that this Agreement is registered against title to the Developer's Land with priority over all financial charges, liens and encumbrances registered, or the registration of which is pending, at the time of application for registration of this Agreement.

9. Severability

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

10. Indemnity, Release and Liability

The Developer releases, and must indemnify and save harmless, the District, its elected and appointed officials and employees, from and against all liability, actions, causes of action, claims, damages, expenses, costs, debts, demands or losses suffered or incurred by the Developer, or anyone else, arising from the granting or existence of this Agreement, or any default of the Developer under or in respect of this Agreement. The parties agree that this Agreement creates obligations arising out of the nature of this document as a section 219 covenant only. The parties agree that no tort obligations or liabilities of any kind exist between the parties in connection with the performance of, or any default under or in

respect of, this Agreement. The intent of this section is to exclude tort liability of any kind and to limit the parties to their rights and remedies under the law pertaining to section 219 covenants.

11. Interpretation

In this Covenant:

- (a) the headings and captions are for convenience only and do not form a part of this Covenant and will not be used to interpret, define or limit the scope, extent or intent of this Covenant or any of its provisions;
- (b) 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 item 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;
- (c) 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;
- (d) a word importing the masculine gender includes the feminine or neuter, and a word importing the singular includes the plural and vice versa; and
- (e) every reference to each party hereto shall be deemed to include the officers, employees, elected officials, agents, servants, successors and assigns of that party.

12. Appendices

The following schedules are annexed to and form part of this Covenant:

Appendix “1” – Land;

Appendix “2” – Phased Development Agreement, with Schedules A and C; and

Appendix “3” – Required Infrastructure.

IN WITNESS WHEREOF the Developer and the District have duly executed this Covenant as of the day, month and year first above written by executing the Form C attached hereto.

APPENDIX “1” – DEVELOPER’S LAND

[List titles comprising Squamish Oceanfront Lands, following Precinct Subdivision]

APPENDIX “2” – PHASED DEVELOPMENT AGREEMENT TEXT, WITH SCHEDULES A AND C

APPENDIX “3” – REQUIRED INFRASTRUCTURE

The Required Infrastructure consists of the following:

1. Main road

The Developer will construct, within the road that is dedicated as part of the Precinct Subdivision referenced in the Phased Development Agreement:

- two 3.5 metre wide travel lanes,
- two 1.5 metre wide bicycle lanes,
- two 2.3 metre wide parking lanes,
- two 1.65 metre wide sidewalks, and
- two 1.05 metre boulevards

generally in keeping with the layout on the Road Cross Section Plan attached hereto and forming part of this Appendix, on the Main Road area shaded in grey on the Site Plan attached hereto and forming part of this Appendix.

The road structure (sub-base, base and asphalt thickness) will be built in accordance with the following standards:

- compacted sub-base thickness: 300 mm;
- compacted base thickness: 150 mm; and
- compacted asphalt thickness lower / upper course: 45 / 40 mm.

Streetlights will be the City Spirit Luminaire, installed approximately every 100 metres on each side of the Main Road.

Street trees will be 8 cm calliper with 96 cm rootball and 1.8 metre clear stem at installation, installed with 7 to 12m spacing. Tree species will match those for Cleveland Avenue (Acer Rubrum ‘Red Sunset Maple’).

2. Water main

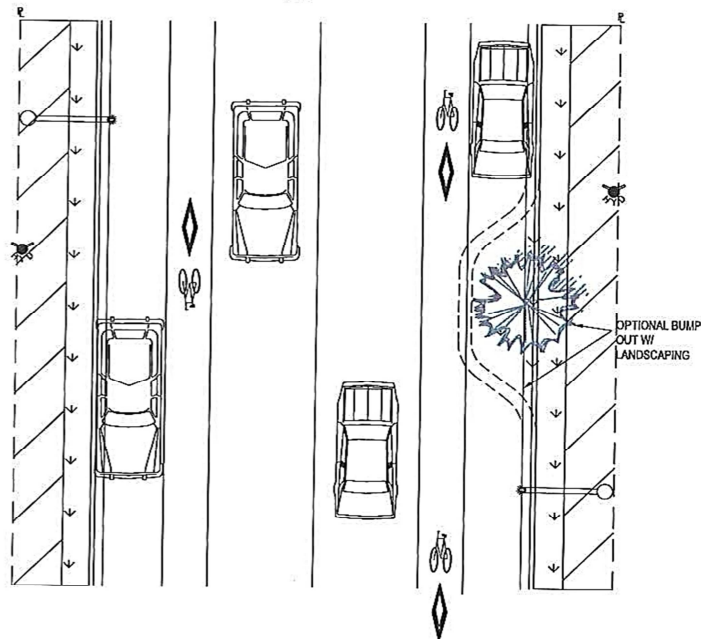
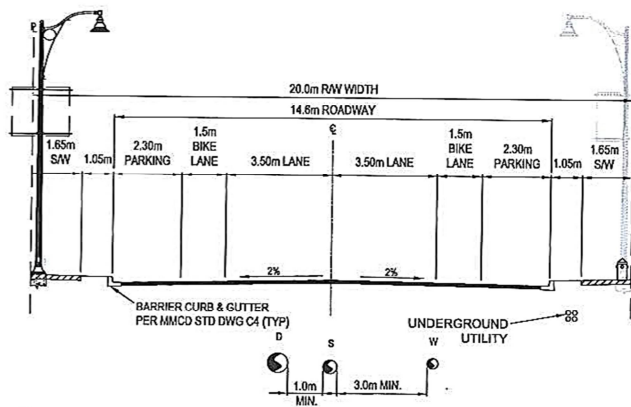
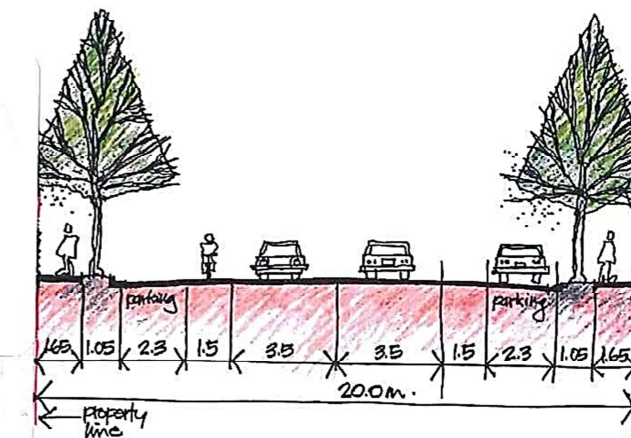
The Developer will construct, within the length (approximately 825 metres) of the dedicated area for the Main Road shown shaded in grey on the Site Plan attached hereto and forming part of this Appendix, approximately 825 metres of C900 300mm PVC water main, at a depth of between 1 and 1.5 metres.

3. Sanitary sewer main

The Developer will construct, within the length (approximately 720 metres) of the portion of the dedicated area for the Main Road that is south of the bend at Galbraith Road shown shaded in grey on the Site Plan attached hereto and forming part of this Appendix, approximately:

- 220 metres of DR35 PVC 200 mm sanitary sewer, in the southerly 220 metres of the Main Road, at a depth of between 1.0 and 2.5 metres, and

500 metres of DR35 PVC 300 mm sanitary sewer, to the immediate north of that 220 metres, to the bend at Galbraith Road, at a depth of between 2.5 and 4.5 metres.



SITE PLAN

1" = 100' (Horizontal)
 1" = 20' (Vertical)
 All dimensions are to the center line of the proposed road or structure.
 All dimensions are to the center line of the proposed road or structure.
 All dimensions are to the center line of the proposed road or structure.

