

TERMS OF INSTRUMENT - PART 2

DATED the ____ day of _____, 2022;

COVENANT

(Section 219 Land Title Act)

BETWEEN:

RICHARD JOHN SCHELLINCK

(the “**Developer**”)

AND:

STRATHCONA REGIONAL DISTRICT a regional district under the Local Government Act of the Province of British Columbia, having its offices, in the Province of British Columbia, V2T 1W7

(The “**Regional District**”)

WHEREAS:

- A. The Grantor is the registered owner in fee simple of lands in the Regional District, legally described in Item 2 of Part 1 of the Land Title Act Form C to which this Agreement is attached and which forms part of this Agreement (the “**Lands**”);
- B. The Developer has applied to rezone the Lands from RU-1 to CR-2A and C-2G;
- C. The Developer has also applied to rezone the foreshore adjacent to the Lands from AC-2 to MC-2;
- D. The Developer has voluntarily agreed to provide the Works and the Phased Works defined herein which are necessary to serve the proposed development of the Lands;
- E. The Developer desires to grant and the Regional District agrees to accept this Covenant on the terms and conditions contained herein; and
- F. Section 219 of the Land Title Act, R.S.B.C. 1996 c.250 provides, inter alia, that a covenant, whether of a negative or positive nature, in respect of the use of land or the use of a building on or to be erected on land, in favour of a Regional District, may be registered as a charge against the title to that land.

NOW THEREFORE THIS AGREEMENT WITNESSETH that pursuant to Section 219 of the Land Title Act, and in consideration of the premises and the mutual covenants and agreements contained herein and the sum of One Dollar (\$1.00) now paid to the Developer by the Regional District (the receipt and sufficiency whereof is hereby acknowledged), the parties hereto covenant and agree each with the other as follows:

1. THE DEVELOPER COVENANTS AND AGREES with the Regional District:

- (a) that the Lands shall not be built on except in accordance with this Covenant;
- (b) that the Lands shall not be built upon in any manner until the 6.0 hectare park adjacent to Gowlland Harbour and the 8.2 hectare park located adjacent to Goose Bay is dedicated to the Regional District. This requirement does not preclude the Developer from subdividing the consolidated site at a future point;
- (c) that until such time as all of the terms and conditions contained in paragraphs 1 and 2 of this covenant are complied with, any buildings or structures erected or placed on, or which are to be erected or placed on the Lands shall not be occupied for any use or purpose;
- (d) to provide, design, construct, install or otherwise comply, to the satisfaction of the Regional District's Senior Manager, Community Services and/or Senior Manager, Engineering or delegate (**the "Community Services Manager", "Senior Manager, Engineering Services"**):
 - (i) Road Works
 - (A) to provide the following, to the satisfaction of, and at a time determined by, the British Columbia Ministry of Transportation and Infrastructure and the Community Services Manager:
 1. construction of Harbourbrook Road;
 2. construction of internal common roads.
 - (ii) Water Works including:
 - (A) the development and provision of approved potable water to a standard that adheres to the provincial requirements and that is satisfactory to the Regional District;
 - (B) the provision of private water connections to each lot created within the development at a standard satisfactory to the Regional District;
 - (C) the installation of fire hydrants within the development for firefighting purposes;
 - (D) fire suppression system to contain back flow prevention as required to protect the potable water system
 - (iii) Sanitary Sewer Works
 - (A) as the development is outside of the Quathiaski Cove Sewer Service Area, the extension of the Quathiaski Cove Sewer main to the development as per Regional District standard and at a cost to the developer;
 - (B) the provision of sewer connections to each lot created within the development at a standard satisfactory to the Regional District.

(iv) Parks

- (A) The dedication of the 8.2 hectare park adjacent to Goose Bay to the Regional District at Phase 1 of the development;
- (B) The dedication of the 6.0 hectare park adjacent to Gowlland Harbour to the Regional District at Phase 1 of the development.

(v) Amenity Works

- (A) the development of a pedestrian/bicycle trail along April Point Road to a standard satisfactory to the regional district at Phase 1 of the development;
- (B) the development of trails with the 8.2 hectare park adjacent to Goose Bay to a standard satisfactory to the regional district at Phase 1 of the development; and
- (C) the development of trails within the 6.0 hectare park adjacent to Gowlland Harbour to a standard satisfactory to the regional district at Phase 1 of the development.

(vi) Bank Protection

- (A) a setback of 15.0 metres (49.2 feet) from top of bank for all construction and land alteration activities occurring adjacent to the foreshore areas.

(collectively called the “**Works**”);

2. The Developer covenants and agrees with the Regional District that the Lands shall be constructed generally in accordance with the Plan attached hereto as Schedule “A” (the “**Plan**”) and that no building in any phase of development of the Lands shall be occupied or used for any purpose unless and until the Developer has, in connection with the portion of the Lands that are affected by the construction of the particular building provided, designed, constructed, installed or otherwise complied with the following, all to the satisfaction of the Community Services Manager:

(a) Drainage Works

- (i) to ensure that post-development stormwater drainage peak flows from the Lands do not exceed pre-development peak flows through the design and construction of onsite detention and retention ponds, infiltration and exfiltration systems, oil/silt separators installed upstream of outfalls, rainwater cisterns to collect roof runoff, permeable pavement for parking stalls and vegetated bioswales; and
- (ii) to ensure that all construction related stormwater impacts are also mitigated.

(b) Geotechnical

- (i) that the land be subdivided in accordance to the geotechnical report attached and that subsequent reports be registered on title for each phase where parcels are created adjacent to the foreshore.

(c) Vegetation Removal

- (i) Vegetation removal is not to take place within 15.0 metres of top of bank.

(the "**Works**")

3. The Developer further covenants and agrees with the Regional District that the design, construction and installation of the Works shall be completed within five (5) years from the date of subdivision and/or prior to the occupancy of any building to be constructed or located on the Lands, whichever event first occurs.
4. The Developer further covenants and agrees with the Regional District that the design, construction and installation of the Works or Phased Works shall be completed within two (2) years from the date of issuance of the first building permit for that phase of development as set out in the Phasing Plan or prior to the occupancy of any building to be constructed or located in that phase of development, as shown on the Phasing Plan, whichever event first occurs.
5. THE DEVELOPER FURTHER COVENANTS AND AGREES with the Regional District:
- (a) to grant to the authority having jurisdiction, all necessary road dedications, statutory rights-of-way and easements over the Lands to accommodate the Works and the Phased Works and where the Works and the Phased Works are located upon or under privately owned lands other than the 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 Regional District, to accommodate the Works and the Phased Works;
- (b) to construct and install the Works and the Phased Works to the Regional District's, standards or to standards of the party having jurisdiction, and to the satisfaction of the Community Services Manager and which, in the discretion of the Community Services Manager, may be varied because of conditions at the site so that the Works and the Phased Works function and operate to the satisfaction of the Community Services Manager, and should the Works or the Phased Works as constructed prove to be in any way defective or should they not operate to the satisfaction of the Community Services Manager, then the Developer shall, at the Developer's expense, modify or reconstruct the Works and the Phased Works so that the Works and the Phased Works shall be fully operative and function to the satisfaction of the Community Services Manager, such satisfaction to be indicated by a Certificate of Substantial Completion signed by the Community Services Manager;

- (c) to assign, transfer and convey, if and as required, the Developer's right, title and interest in the Works and the Phased Works to the party having jurisdiction, and the Developer shall, from time to time and at all times so long as the Developer exercises any rights of ownership in the Lands, upon the request of the Regional District, make, do and execute or cause or procure to be made, done and executed, all such further acts, deeds, rights-of-way, easements and assurances required by the Regional District for the effectual carrying out of this Covenant;
- (d) to deposit as security for the due and proper completion of the construction and installation of:
 - (i) the Works, a security deposit for the Works, prior to the execution of this Covenant, in the form of cash or security, in a form satisfactory to the Regional District, the sum of \$XXXXXX; and
 - (ii) the Phased Works, a security deposit for completion of the Phased Works prior to commencement of construction of any building in any phase of development, as set out in the Phasing Plan, in the form of cash or security, in a form satisfactory to the Regional District and in an amount to be determined adequate by the Regional District to complete the Phased Works, immediately prior to commencement of construction of that phase.

If the Works or Phased Works, as the case may be, are not completed in accordance with this Agreement, the Regional District may review the estimated cost of completion of the Works and the Phased Works, as the case may be, and provide to the Developer at least sixty (60) days prior to each anniversary of this Covenant until all of the Works or Phased Works, as the case may be, have been completed, notice of the estimated cost of the completion of the Works or Phased Works, as the case may be, and, upon receiving notice of the revised estimate the Developer shall deposit with the Regional District a replacement security deposit (the "**Replacement Security Deposit**") in the amount of the revised estimate of the cost of completing the Works or Phased Works, as the case may be, and, for the purposes of this Covenant, the Replacement Security Deposit shall become the Security Deposit. Upon receipt of the Replacement Security Deposit, the Regional District shall forthwith return the Security Deposit to the Developer. If the Replacement Security Deposit is not received by the Regional District by thirty (30) days of the notice referred to herein, the Regional District may draw upon the Security Deposit and hold the monies thereby obtained as security or complete the Works or Phased Works, as the case may be, as provided hereinafter;

- (e) that, despite paragraph 6(d), if the construction and installation of the Works or Phased Works, as the case may be, are not duly and properly completed within the time specified in this Agreement, the Regional District may, but is not obligated to draw upon the Security Deposit and may complete the Works or the Phased Works, as the case may be, at the cost of the Developer and deduct from the Security Deposit or Replacement Security Deposit, the cost of such completion. The balance of the Security Deposit shall be returned to the Developer, less any administration costs incurred by the Regional District. If the Security Deposit is insufficient to cover the actual cost of completing the Works or the Phased Works, as the case may be, then the Developer shall pay such deficiency to the Regional District immediately upon receipt of the Regional District's bill for same. It is understood that the Regional District may do such work either by itself or by contractors employed by the Regional District;

- (f) subject to paragraph 7(c), if the Works or the Phased Works, as the case may be, are completed by the Developer as herein provided, then the Security Deposit shall be returned to the Developer on receipt of the Community Services Manager's Certificate of Substantial Completion. If a portion of the Works or Phased Works, as the case may be, is completed to the satisfaction of the Community Services Manager, the Regional District may, acting in its sole discretion, reduce the amount of the Security Deposit to reflect the completed portion of the Works, provided that there is always sufficient security to ensure completion of the remaining Works or Phased Works, as the case may be;
- (g) to submit to the Community Services Manager, if so required the final as-built drawings of the Works or the Phased Works, as the case may be, as constructed and as approved by the Community Services Manager within thirty (30) days from the date of completion of the Works or the Phased Works, as the case may be.

6. THE DEVELOPER FURTHER COVENANTS AND AGREES with the Regional District:

- (a) to maintain the Works or the Phased Works, as the case may be, in complete repair for one (1) year after issuance of the Certificate of Substantial Completion (the "**Warranty Period**") and regardless of whether or not the Developer has transferred title to all or any part of the Lands to another party;
- (b) to remedy any defects appearing during the Warranty Period and pay for any damage to other works or property resulting therefrom, save and except for defects caused by reasonable wear and tear and negligence of the Regional District, its servants or agents, or acts of God;
- (c) to deposit as security with the Regional District, prior to the return of the Security Deposit, in the form of cash or security in a form satisfactory to the Regional District, the sum of \$XX XXX (the "**Warranty Deposit**"). Should the Developer fail to maintain the Works or the Phased Works, as the case may be, or remedy any defect or pay for any damages resulting therefrom, the Regional District may draw upon the Warranty Deposit and may, but is not obligated to maintain the Works or the Phased Works, as the case may be, remedy the defect or pay the damages at the cost of the Developer and may deduct the cost of maintaining the Works or the Phased Works, as the case may be, remedying the defect or paying the damages from the Warranty Deposit and the balance of the Warranty Deposit, less any administrative costs incurred by the Regional District shall be returned to the Developer on receipt of the Community Services Manager's Certificate of Acceptance. If the Warranty Deposit is insufficient to cover the actual costs incurred by the Regional District, then the Developer shall pay such deficiency to the Regional District immediately upon receipt of the Regional District's bill for same. If the Works or the Phased Works, as the case may be, are maintained by the Developer as herein provided, then the Warranty Deposit shall be returned to the Developer on receipt of the Community Services Manager's Certificate of Acceptance;

- (d) that the work done and payment made pursuant to this Covenant are not payments or work to be applied in lieu of Development Cost Charges. Despite the previous sentence, the Developer shall not be under any obligation to pay Development Cost Charges for water or parks. As the Developer is constructing a state of the art sewage disposal system on the Lands, the Developer will not be required to connect to the Regional District sewer system or pay Development Cost Charges for Sewer upon the Development of the Lands. Should at any time in the future, the Developer request that the Lands, or any portion thereof, be connected to the Regional District Sewer System, the Regional District shall be under no obligation, at law or otherwise, to connect the Lands, or portion thereof, to the Regional District sewer system unless and until arrangements, including monetary contribution, satisfactory to the Regional District has been provided by the Developer;
- (e) to protect all survey markers, pins, posts and similar things during the construction installation, maintenance and repair of the Works or the Phased Works, as the case may be, and to employ, at the Developer's expense, a British Columbia Land Surveyor to replace any such markers, pins, posts or similar things which may be moved, damaged or destroyed during such construction, installation, maintenance or repair;
- (e) to save harmless and effectually indemnify the Regional District from and against:
 - (i) any and all actions and proceedings, costs, damages, expenses, claims and demands whatsoever and by whosoever brought by reason of or in any way arising out of or related to the construction, installation, maintenance or repair of the Works or the Phased Works, as the case may be, including, without limitation, any and all claims for injurious affection, whether such claims arise at law or under any statute, including, without limitation, the Expropriation Act, R.S.B.C. 1996, and any amendments, rules or regulations thereto, or otherwise whatsoever;
 - (ii) any and all expenses and costs which may be incurred by reason of or in any way arising out of or related to the construction, installation, maintenance or repair of the Works or the Phased Works, as the case may be, resulting in damage to any property owned in whole or in part by the Regional District or which the Regional District by duty or custom is obliged, directly or indirectly, in any way or to any degree, to construct, install, maintain or repair;
 - (iii) any and all expenses and costs which may be incurred by reason of liens for non-payment of labour materials, workers' compensation, unemployment insurance, Federal or Provincial tax, check-off or encroachments owing to mistakes in survey; and
 - (iv) any and all breaches of this Covenant.

Without limiting the generality of the foregoing provisions in paragraph 7(f), the Developer acknowledged that fire flow requirements can not be met to provide on site fire suppression needs and covenants and agrees with Regional District to hold harmless and indemnify the Regional District from and against any claims related to damage to property or injury, including death, of any person, arising out of, or in any way connected with a fire occurring on, or about, the Lands or the Strata Property;

- (g) to obtain and maintain until the date of issuance of the Certificate of Acceptance of the Works or the Phased Works, as the case may be, at the Developer's expense, with such company or companies and on such forms as are acceptable to the Regional District, in the name of the Developer, Comprehensive General Liability insurance coverage covering premises and operations liability, contingency liability with respect to the operations of the contractor and subcontractors, completed operations liability, contractual liability and automobile liability for owned, non-owned and hired units. The limits of liability shall be not less than \$5,000,000.00 for each occurrence for bodily injury and property damage. Each policy shall provide that it cannot be cancelled, lapsed or materially altered without at least thirty (30) days notice in writing to the Regional District by registered mail, shall name the Regional District as an additional insured and shall contain a cross-liability clause;
- h) to deliver a copy of each such insurance policy to the Regional District prior to the commencement of any construction, installation, maintenance or repair of the Works or the Phased Works, as the case may be;
- (i) that if the Developer fails to obtain and/or maintain the said insurance or deliver the said policy or policies to the Regional District, then the Regional District may obtain and/or maintain such insurance at the expense of the Developer and the Developer hereby appoints the Regional District as the Developer's lawful attorney to do all things necessary for that purpose; and
- (j) to do or cause to be done, at the expense of the Developer, all acts reasonably necessary to grant priority to this Covenant over all charges and encumbrances which may have been registered against the title to the Lands in the Lower Mainland Land Title Office save and except those specifically approved in writing by the Regional District or in favour of the Regional District.

7. THE DEVELOPER FURTHER COVENANTS AND AGREES with the Regional District:

- (a) in this section, "Excess or Extended Services" means:
 - (i) a portion of a highway system that will provide access to land other than the land being subdivided or developed; and
 - (ii) a portion of a water, sewage or drainage system that will serve land other than the land being subdivided or developed.
- (b) the Developer and the Regional District agree that none of the Works or the Phased Works, as the case may be, provided by the Developer under this Agreement constitute Excess or Extended Services; and
- (c) the Developer and the Regional District agree that, if a court of competent jurisdiction finds that, despite the parties' agreement set out in paragraph 8(b) above, all or part of the Works or the Phased Works, as the case may be, provided by the Developer under this Agreement constitute Excess or Extended Services, the Regional District will collect charges payable for latecomer connections to or use of these Works or the Phased Works, as the case may be, during the period beginning when a Certificate of Substantial Completion is issued with respect thereto (the "Completion Date") and ending one day after the Completion Date.

The Developer hereby releases and forever discharges and covenants not to sue the Regional District and its servants, agents, successors and assigns from all manner of actions, causes of action, suits, debts, dues, accounts, bonds, covenants, contracts, claims and demands whatsoever against the Regional District which the Developer ever had, now has or hereafter may have by reason of the installation of the Works or the Phased Works, as the case may be, by the Developer with no contribution toward the cost of the Works or the Phased Works, as the case may be, by the Regional District or any other person and, without limiting the generality of the foregoing, by reason of the failure by the Regional District to impose or collect any latecomer charges from the owners of any lands which may connect to or use the Works or the Phased Works, as the case may be.

8. THE REGIONAL DISTRICT COVENANTS AND AGREES with the Developer:
 - (a) to permit the Developer to perform all of the Works or the Phased Works, as the case may be, within the legal jurisdiction of the Regional District upon the terms and conditions herein contained; and
 - (b) that upon satisfactory completion by the Developer of all of the covenants and conditions in this Covenant, including the maintenance of the Works or the Phased Works, as the case may be, in complete repair for a period of one (1) year, the Regional District shall provide the Developer with a Certificate of Acceptance of the Works or the Phased Works, as the case may be, signed by the Community Services Manager and shall discharge this Covenant.

10. IT IS MUTUALLY UNDERSTOOD, agreed and declared by and between the parties hereto that:
 - (a) the Regional District has made no representations, covenants, warranties, guarantees, promises or agreements (oral or otherwise) with the Developer other than those contained in this Covenant;
 - (b) nothing contained or implied herein shall prejudice or affect the rights and powers of the Regional 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 Lands as if this Covenant had not been executed and delivered by the Developer;
 - (c) the Works or the Phased Works, as the case may be, shall be and remain at the sole risk of the Developer unless by the Regional District or other entity having jurisdiction, regardless of whether or not the developer has transferred title to all or any part of the Lands to another party;
 - (d) the covenants set forth herein shall charge the Lands pursuant to Section 219 of the Land Title Act and shall be covenants the burden of which shall run with the Lands. It is further expressly agreed that the benefit of all covenants made by the Developer herein shall accrue solely to the Regional District and that this Covenant may be modified by agreement of the Regional District with the Developer, or discharged by the Regional District, pursuant to the provisions of Section 219(5) of the Land Title Act;

- (e) wherever the singular or masculine is used herein, the same shall be construed as meaning the plural, feminine or the body corporate or politic where the context or the parties so require and, where the Developer consists of more than one person, the term "Developer" shall mean all such persons jointly and severally;
- (f) this Covenant shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns; and
- (g) the parties hereto shall do and cause to be done all things and execute and cause to be executed all documents which may be necessary to give proper effect to the intention of this Covenant.

IN WITNESS WHEREOF the parties hereby acknowledge that this agreement has been duly executed and delivered by executing the Forms C and D attached hereto.

DRAFT

SCHEDULE "A"

DRAFT

END OF DOCUMENT