

APPENDIX D

Section 219 Covenant, Option to Purchase and Right of First Refusal

[see attached]

**SECTION 219 COVENANT, OPTION TO PURCHASE AND RIGHT OF FIRST REFUSAL
(LOT [redacted])**

THIS AGREEMENT dated for reference the _____ day of _____, 202[redacted]

BETWEEN:

(the “**Owner**”)

AND:

The Village of Burns Lake, a local government pursuant to the *Local Government Act* (British Columbia) having an address at Box 570 15 – 3rd Avenue Burns Lake, British Columbia, V0J 1E0

(the “**Village**”)

WHEREAS:

- A. Capitalized terms used in these recitals have the meanings set out in Article 1 below;
- B. The Owner is the registered and beneficial owner of the Lands;
- C. The Village has requested, and the Owner has agreed to provide, covenants pursuant to Section 219 of the *Land Title Act* (British Columbia) requiring the Owner meet certain Development Milestones in respect of the Lands;
- D. The Owner wishes to grant to the Village and the Village wishes to accept from the Owner an option to purchase the Lands and right of first refusal if the development of the Lands does not proceed in accordance with the Development Milestones; and
- E. The Village and the Owner have agreed to enter into this Agreement to set out their respective rights and obligations with respect to the Option, Section 219 Covenant and Right of First Refusal.

NOW THEREFORE in consideration of the sum of \$1.00 now paid by the Village to the Owner (the receipt and sufficiency of which is hereby acknowledged by the Owner) and in consideration of the mutual covenants and agreements herein contained, the Owner and the Village covenant and agree as follows:

**ARTICLE 1
DEFINITIONS**

1.1 Definitions

In this Agreement:

- (a) **“Adjustment Date”** has the meaning given in subsection 6.3(b);
- (b) **“Agreement”** or **“this Agreement”** means this agreement, the Option, Section 219 Covenant and Right of First Refusal created hereby, and includes the recitals, and all appendices and schedules hereto;
- (c) **“Arm’s-length”** has the same meaning as that term has in the *Income Tax Act (Canada)* and amendments to that Act, determined in accordance with such Act, the Interpretation Bulletins thereunder and all relevant case law, all as from time to time in effect;
- (d) **“Bona Fide Offer”** means an offer by the Owner to sell or by the Third Party to purchase the Lands that:
 - (i) is in writing,
 - (ii) is signed by a Third Party;
 - (iii) pertains only to the Lands and no other property, rights or assets;
 - (iv) is in a form legally enforceable against the Third Party and subject to no conditions other than that the Village waive its rights under the Right of First Refusal contained in this Agreement;
 - (v) provides that if the Village does not exercise its Right of First Refusal (or Option), the Third Party will grant to the Village an option to purchase and right of first refusal to purchase the Lands upon the same terms and conditions as are set forth in this Agreement; and
 - (vi) includes as a date for completion of the purchase and sale a specific date or date that is determinable from the face of the offer without reference to any other information or occurrence;
- (e) **“Building”** means a building to be constructed on the Lands pursuant to a Building Permit, but does not include existing buildings or temporary buildings or structures on the Lands during the period of and required for the purposes of construction on the Lands;
- (f) **“Building Permit”** means a building permit issued by the Village authorizing construction of a Building on the Lands, or any portion(s) thereof, after the date of this Agreement;
- (g) **“Business Day”** means a day which is not a Saturday, Sunday or statutory holiday recognized in the Province of British Columbia;
- (h) **“Closing”** means the closing of the sale and purchase of the Lands as contemplated herein;
- (i) **“Closing Date”** has the meaning given in Section 7.1;

- (j) **“Contaminants”** means any pollutants, contaminants, deleterious substances, underground or above-ground tanks, asbestos materials, Hazardous Materials, or any other substance which is now or hereafter prohibited, controlled or regulated under Environmental Laws;
- (k) **“Development Milestones”** has the meaning given in Section 3.1;
- (l) **“Development Permit”** means a development permit issued by the Village authorizing development on the Lands or any portion(s) thereof;
- (m) **“Discharges”** has the meaning given in subsection 7.2(a)(vii);
- (n) **“Environmental Laws”** means all present and future environmental, land use, zoning, health, chemical use, safety and sanitation laws, statutes, bylaws and regulations of any governmental authorities relating to the protection of the environment and governing the presence, management, remediation, use, storage, treatment, generation, transportation, processing, handling, production or disposal of contaminants, including air pollution and water pollution and the rules, regulations, policies, guidelines, interpretations, decisions, approvals, consents, orders (including remedial orders) and directives of any governmental authority;
- (o) **“Event of Force Majeure”** means any event or circumstance, other than a lack of sufficient funds on the part of the Owner, beyond the control of the Owner which results in an inability or delay to perform a covenant or agreement to be performed under this Agreement, which event or circumstance shall include fires, explosions, earthquakes, storms, tempest, inclement weather, strikes, labour interruptions, inability to procure necessary labour, materials or services or suitable alternatives therefor, power failure, changes in laws or regulations rendering the development plans of the Owner impossible, riots, insurrection, sabotage, rebellion, war, act of God or other events or circumstances whether of a like nature or not which are beyond the control of the Owner;
- (p) **“Form A Transfer”** means the Form A - Freehold Transfer required to transfer title to the Lands to the Village in accordance with the terms of this Agreement;
- (q) **“GST”** means all goods and services tax and harmonized sales tax imposed under Part IX of the *Excise Tax Act* (Canada);
- (r) **“GST Certificate”** has the meaning given in subsection 5.2(d);
- (s) **“Land Title Office”** means the applicable Government of British Columbia Land Title Office at which title to the Lands is registered;
- (t) **“Lands”** means the lands and premises legally described as **[Select appropriate description below, and delete rest]**

Lot A: PID: 032-263-678 Lot A District Lot 2502 Range 5 Coast District Plan EPP131628

Lot B: PID: 032-263-686 Lot B District Lot 2502 Range 5 Coast District Plan EPP131628;

Lot C: PID: 032-263-694 Lot C District Lot 2502 Range 5 Coast District Plan EPP131628;

- (u) **“New Form C”** has the meaning given in subsection 4.1(d)(i);
- (v) **“Occupancy Certificate”** means a certificate or such other written evidence of the Village’s authorization of the use or occupation of any Building, or any portion(s) thereof;
- (w) **“Option”** has the meaning given in Section 2.1;
- (x) **“Option Notice”** has the meaning given in Section 2.3;
- (y) **“Option Period”** has the meaning given in Section 2.2;
- (z) **“Ownership Date”** means the date on which the Owner became the registered owner of the Lands;
- (aa) **“Owner’s Legal Representative”** means any legal representative authorized to act for the Owner in regard to this Agreement;
- (bb) **“Parties”** means, the Owner and the Village and **“party”** means either the Owner or the Village;
- (cc) **“Permitted Encumbrances”** means any subsisting conditions, provisos, restrictions, exceptions and reservations contained in the original grant, or in any grant or disposition from the Crown or imposed or implied by statute and any statutory exceptions to title, attached hereto as Schedule A;
- (dd) **“Prohibition Act”** means the *Prohibition on the Purchase of Residential Property by Non-Canadians Act*, SC 2022, c.10, s.235, or any successor acts;
- (ee) **“Property Transfer Tax Act”** means the *Property Transfer Tax Act*, RSBC 1996, c. 378, or any successor act;
- (ff) **“PST”** means all provincial sales tax payable and imposed pursuant to the *Provincial Sales Tax Act*, SBC 2012 c. 35;
- (gg) **“Purchase Price”** means the amount payable by the Village to the Owner for the purchase of the Lands to be determined under Section 5.1;
- (hh) **“Right of First Refusal”** means the sole and exclusive right of first refusal to purchase the Lands granted by the Owner in favour of the Village under Section 4.1;
- (ii) **“Section 219 Covenant”** means the Section 219 Covenant granted by the Owner to the Village under Article 3;

- (jj) **“Statutory Declaration”** has the meaning set out in subsection 8.2(b);
- (kk) **“Term”** means that period of time that is five (5) years from and after the date of the Section 219 Covenant;
- (ll) **“Third Party”** means a purchaser or prospective purchaser, other than the Village, who makes a Bona Fide Offer and who deals at Arm’s-length with the Owner;
- (mm) **“Transfer Notice”** has the meaning set out in subsection 4.1(a); and
- (nn) **“Village’s Legal Representative”** means the legal representative authorized to act for the Village in regard to this Agreement.

**ARTICLE 2
OPTION TO PURCHASE**

2.1 Grant of Option

The Owner hereby grants to the Village the sole, exclusive option (the **“Option”**), irrevocable during the Option Period, to purchase the Lands, including all improvements thereon, free and clear of all liens, interests, encumbrances and legal notations, except for the Permitted Encumbrances.

2.2 Option Period & Triggering Event

The Option may only be exercised by the Village in the event that the Owner has not satisfied the requirements in any of subsections 3.1(b)(i), 3.1(b)(ii), or 3.1(b)(iii) on or before the deadlines set out therein (the **“Option Period”**).

For certainty, the Owner and the Village acknowledge and agree with the Village’s right to exercise the Option.

2.3 Exercise of Option

The Option may be exercised by the Village during the Option Period unless this Agreement is terminated, surrendered or otherwise determined to be unenforceable, by delivery of written notice (the **“Option Notice”**) to the Owner in the manner set out in this Agreement for the giving of notices.

2.4 Restrictions on Exercise of Option

The Village may not exercise the Option pursuant to subsection 2.2(b) unless the Owner delivers to the Village the Transfer Notice in accordance with subsection 4.1(a) below.

2.5 Binding Agreement

If the Village exercises the Option during the Option Period in accordance with Section 2.3, this Agreement will become a binding agreement for the purchase and sale of the Lands, which purchase and sale shall be completed upon the terms and conditions contained herein on the Closing Date.

**ARTICLE 3
SECTION 219 COVENANT**

3.1 Grant of Section 219 Covenant

The Owner hereby covenants and agrees with the Village, as a covenant in favour of the Village pursuant to Section 219 of the *Land Title Act*, it being the intention and agreement of the Owner that the provisions hereof be annexed to, and run with and be a charge on title to the Lands, that:

- (a) the Lands will not be developed or used except in accordance with the terms of this Agreement;
- (b) the Owner will adhere to the following development milestones:
 - (i) to obtain a Development Permit for the Lands within one (1) year of the Ownership Date;
 - (ii) to obtain a Building Permit for all Buildings to be constructed on the Lands, and all such Building being substantially completed, within two (2) years of the Ownership Date; and
 - (iii) to obtain any and all Occupancy Certificates required in respect of all Buildings on the Lands, within three (3) years of the Ownership Date, unless otherwise agreed to by the Parties in writing,

(collectively, the “**Development Milestones**”).

For purposes of this Section 3.1, the term “substantially completed” means that, in respect of a Building, the Building or a substantial part of it is ready for use or is being used for the purpose intended.

**ARTICLE 4
RIGHT OF FIRST REFUSAL**

4.1 Grant of Right of First Refusal

During the Term, the Owner hereby grants to the Village the sole, exclusive right of first refusal (the “**Right of First Refusal**”) to purchase the Lands, including all improvements thereon, free and clear of all liens, interests, encumbrances and legal notations, except for the Permitted Encumbrances, on the following terms and conditions:

- (a) if at any time during the Term, the Owner:
 - (i) makes a Bona Fide Offer to a Third Party, which Bona Fide Offer the Third Party is willing to accept; or
 - (ii) receives a Bona Fide Offer, which Bona Fide Offer the Owner is willing to accept,

then the Owner will promptly give the Village written notice (the “**Transfer Notice**”) thereof and will attach a full and complete true copy of the Bona Fide Offer thereto;

- (b) after receipt of the Transfer Notice, the Village may, within five (5) Business Days, exercise the Option by written notice to the Owner. If the Village exercises the Option, upon such exercise, the Owner will complete the Form A Transfer to the Village in accordance with this Agreement;
- (c) if the Village does not exercise the Right of First Refusal (or the Option) within the period specified in subsection 4.1(b) above, then the Owner may complete the transfer to the Third Party on the terms and conditions contained in the Bona Fide Offer, except that such transfer of title to the Lands will remain subject to both the Right of First Refusal and the Option;
- (d) if the Owner intends to complete the transfer to the Third Party, as contemplated in subsection (c) above, at least five (5) Business Days before the completion of the transfer to the Third Party, the Owner must deliver to the Village:
 - (i) a signed Form C granting to the Village an option to purchase and right of first refusal to purchase the Lands on the same terms as set out in this Agreement (the “**New Form C**”);
 - (ii) a discharge of this Agreement for execution by the Village; and
 - (iii) undertakings from the solicitor or notary for the Third Party on terms satisfactory to the Village, including to:
 - (A) register the discharge only concurrently with the registration of the New Form C, as an “all or nothing package” and in priority to all mortgages and other financial liens, charges and encumbrances, except for any charges in favour of the Village; and
 - (B) promptly following registration of the New Form C, provide the Village with a copy of the discharge and New Form C bearing registration particulars along with a copy of the vendor’s statement of adjustments with respect to the transaction certified to be a true copy thereof by the Third Party’s lawyer or notary; and
- (e) if for any reason the Owner does not effect the transfer to the Third Party on the terms set out in the Bona Fide Offer, the Right of First Refusal (and Option) will continue to apply to any sale, transfer, conveyance or other disposition of the Lands or any portion thereof by the Owner.

ARTICLE 5 PURCHASE PRICE AND PAYMENT

5.1 Purchase Price

If the Village exercises the Option pursuant to subsection 2.2(a) or subsection 2.2(b), then the purchase price for the Lands shall be ninety percent (90%) of the original purchase price the Owner paid to the Village for the Lands (the “**Purchase Price**”).

5.2 The Village’s Fees and Taxes

In addition to payment of the Purchase Price, the Village shall pay, as and when due and payable:

- (a) any applicable property transfer tax payable under the *Property Transfer Tax Act* (British Columbia) in connection with the conveyance of the Lands;
- (b) Land Title Office registration fees in connection with the registration of the Form A Transfer;
- (c) the Village's own legal fees and disbursements in connection with the registration of the Form A Transfer; and
- (d) GST and PST payable in connection with the purchase of the Lands. The Village is registered for GST purposes. If any transaction contemplated in this Agreement constitutes a "taxable supply" for GST purposes, the Village will, on the Closing Date, self-assess and will account directly to the Canada Revenue Agency therefor, provided that the Village delivers to the Owner, on or before the Closing Date, a certificate and indemnity ("**GST Certificate**") signed by the Village confirming the Village's GST registration number and Village's registered status.

5.3 The Owner's Fees and Taxes

The Owner shall pay, as and when due and payable:

- (a) any registration fees, taxes or other charges required to clear title to the Lands, subject only to the Permitted Encumbrances; and
- (b) its own legal fees and disbursements in connection with the transaction described herein.

ARTICLE 6 ACCESS, RISK, ADJUSTMENT AND POSSESSION

6.1 Access

If the Village exercises the Option then the Village, its agents or employees may by giving the Owner written notice, enter upon the Lands from the date this Option is registered in the Land Title Office until the earlier of the Option Closing Date or expiry of this Option, at the Village's sole risk and expense, for the purpose of making inspections, surveys, tests and studies of the Lands or any portions thereof.

6.2 Risk

The Lands will be at the risk of the Owner until completion of the transfer of the Lands to the Village and after completion the Lands will be at the risk of the Village.

6.3 Adjustments

The Parties agree that:

- (a) the Purchase Price shall be adjusted for property taxes, rates, charges and all other incomings and outgoings with respect to the Lands;
- (b) all adjustments will be adjusted for as of the Closing Date (the “**Adjustment Date**”); and
- (c) the Adjustment Date shall be for the benefit of the Village.

6.4 Possession and Title

Provided that the Form A Transfer conveying the Lands from the Owner to the Village has been submitted to the Land Title Office and the Purchase Price, as adjusted, has been delivered to the Owner's Legal Representatives, in trust, the Owner will transfer to the Village good, safe holding and marketable title to the Lands and will give to the Village vacant possession of the Lands on the Closing Date free from all tenancies, judgments, liens, claims, charges, service contracts, encumbrances and legal notations other than the Permitted Encumbrances.

ARTICLE 7 CLOSING AND CLOSING PROCEDURE

7.1 Closing Date

If the Option is exercised by the Village, then the contract of purchase and sale arising from the exercise of the Option will be completed within 30 Business Days of the delivery date of the Option Notice (the “**Closing Date**”), or such other date as the Parties agree to in writing. If the applicable Land Title Office is not open on that day, the Closing Date will be the next day that it is open for business.

7.2 Closing Documents and Procedure

The Parties agree as follows:

- (a) at the Village's sole cost, the Village will prepare and deliver the following documents for review by the Owner, at least five (5) Business Days prior to the Closing Date:
 - (i) the Form A Transfer duly executed in registerable form;
 - (ii) a vendor's statement of adjustments;
 - (iii) the Statutory Declaration;
 - (iv) a statutory declaration certifying that the Village is not a non-Canadian under the *Prohibition Act*;
 - (v) a certificate from the Owner confirming that each of the representations and warranties of the Owner set out herein is true and accurate on the Closing Date, except as disclosed therein;
 - (vi) if applicable, the GST Certificate bearing the Village's GST registration number;

- (vii) discharges or releases in registerable form of all liens, charges, encumbrances and notations not constituting Permitted Encumbrances, if any, encumbering the Lands (collectively, the “**Discharges**”), or undertakings to provide such discharges or releases which are in a form satisfactory to the Owner’s Legal Representative and the Village’s Legal Representative, acting reasonably; and
 - (viii) such other documents as the Village may reasonably require to complete the transaction herein contemplated;
- (b) on or before the Closing Date, the Owner will deliver to the Village the closing documents set out in subsection (a) above, excluding the documents referred to in 7.2(a)(v) and 7.2(a)(vi), duly executed by the Owner, as applicable, and each of which will be in form and substance satisfactory to the Parties and their respective legal representatives or notaries, acting reasonably; and
- (c) on the Closing Date, the Village will deliver to the Owner’s Legal Representative, a duly executed copy of the following:
- (i) a purchaser’s statement of adjustments;
 - (ii) a statutory declaration certifying that the Village is not a non-Canadian under the *Prohibition Act*;
 - (iii) if applicable, the GST Certificate bearing the Village’s GST registration number;
 - (iv) a certificate from the Village confirming each of the representations and warranties of the Village set out herein is true and accurate on the Closing Date, except as disclosed therein;
 - (v) the Purchase Price, as adjusted, by way of, a solicitor’s trust cheque or electronic transfer in accordance with banking details provided by the Owner to the Village prior to the Closing Date; and
 - (vi) such other documents as the Owner may reasonably require to complete the transaction herein contemplated.

7.3 Concurrent Requirements

It is a condition of this Agreement that all the requirements in Section 7.2 are concurrent requirements and it is agreed that nothing will be completed on the Closing Date until everything required to be paid, executed and delivered on the Closing Date has been so paid, executed and delivered.

ARTICLE 8 REPRESENTATIONS AND WARRANTIES

8.1 Village’s Representations and Warranties

Regardless of any independent investigation that the Owner may cause to be made, the Village warrants and represents to the Owner, as warranties and representations that are true as at the date of execution hereof by the Village and will be true as at the Closing Date, and acknowledges that the Owner has relied thereon in entering into this Agreement and in concluding the purchase and sale of the Lands, that:

- (a) it is a municipality duly incorporated and validly existing under the laws of British Columbia and has the power and authority to enter into and perform its obligations under this Agreement; and
- (b) it is not a non-Canadian within the meaning of such term under the *Prohibition Act* and is not prohibited under the *Prohibition Act* from purchasing residential properties (within the meaning of such term under the *Prohibition Act*).

8.2 Owner's Representations, Warranties and Covenants

Regardless of any independent investigation that the Village may cause to be made, the Owner warrants and represents to the Village, as warranties and representations that are true as at the date of execution hereof by the Owner and will be true as at the Closing Date, and acknowledges that the Village has relied thereon in entering into this Agreement and in concluding the purchase and sale of the Lands, that:

- (a) Authority – the Owner has the power and authority to enter into and perform its obligations under this Agreement;
- (b) Residency – the Owner is not a “non-resident” of Canada for the purposes of the *Income Tax Act (Canada)* and will provide the Village with a statutory declaration of this, in the Village’s form (the “**Statutory Declaration**”), on or before the Closing Date;
- (c) Litigation – to the Owner’s knowledge, there are no claims, actions or proceedings which are pending or to the Owner’s knowledge threatened, that would interfere with the use, occupation and enjoyment the Lands by the Village or which could affect the Village’s right to own, occupy and obtain revenue from the Lands or with respect to the Owner, which if decided adversely, could materially affect the ability of the Owner to comply with its obligations hereunder;
- (d) Property Taxes – all municipal taxes, local improvement taxes, rates, levies and assessments whatsoever due and owing with respect to the Lands in the current calendar year and all preceding calendar years have been, or will on the Closing Date, be paid in full and, except as disclosed to the Owner in writing. No appeals of assessments or such taxes have been made by the Owner and are outstanding;
- (e) Special Levies – the Owner has not entered into any agreement with any governmental authority having jurisdiction that would have the result of making the Lands subject to any sewer charges, local improvement rates, development cost levies or charges of a similar nature other than as currently assessed;

- (f) Expropriation and Condemnation – to the knowledge of the Owner, neither the Lands nor any part thereof has been expropriated or condemned, nor has the Owner received any notice of any proposed expropriation or condemnation relating to the Lands;
- (g) Title – the Owner is the registered and beneficial owner of a fee simple interest in the Lands, free and clear of all liens, charges and encumbrances except for the Permitted Encumbrances;
- (h) No Breach – the Owner has not received any work order, deficiency notice or other written notice from any authority, board of fire insurance underwriters or anyone else, advising of any breach of any such law, by law, code, regulation, standard or agreement or suggesting that any repair or work is necessary to the Lands or any part thereof;
- (i) Environmental – to the Owner’s knowledge:
 - (i) the Lands comply with all applicable Environmental Laws;
 - (ii) there are no existing orders or other similar requirements made by governmental authorities regarding the environmental condition of the Lands;
 - (iii) the Lands are free from Contaminants; and
 - (iv) the Lands have not been used for the storage, manufacture, disposal, treatment, generation, transport or release into the environment, including by way of discharge, emission, spill, leakage or otherwise, of any Contaminants; and
- (j) if the Owner is a corporate entity, then:
 - (i) the Owner is duly incorporated and validly existing under the laws of British Columbia; and
 - (ii) the Owner is in good standing with the Registrar of Companies for British Columbia and has made all necessary filings with the Registrar as required by the applicable legislation.

8.3 Survival of Representations and Warranties

All representations, warranties, covenants, indemnities and agreements made by the Owner and the Village will survive the Closing Date and the transfer of the Lands from the Owner to the Village.

ARTICLE 9 INDEMNITY

9.1 Indemnity

The Owner hereby agrees:

- (a) to release, forever discharge, indemnify and save harmless the Village from all losses, damages, costs (including, without limitation, legal costs on a solicitor and own-client basis), expenses, fines, actions, penalties, suits, debts, accounts, claims and demands, including, without limitation, economic loss and any and all claims of third parties, which the Village may suffer, incur or be put to arising out of or in connection with, directly or indirectly, or that would not or could not have occurred “but for” this Agreement, including without limitation:
 - (i) the design and construction activities of the Owner or its servants, agents, contractors or subcontractors in connection with the design and construction of any Buildings pursuant to this Agreement;
 - (ii) the use of the Lands as contemplated under this Agreement;
 - (iii) restrictions or requirements under this Agreement;
 - (iv) any breach by the Owner of any covenant or agreement contained in this Agreement;
 - (v) the exercise of discretion by any Village personnel for any matter relating to this Agreement;
 - (vi) the Village withholding any Development Permit in respect of the Lands, or any Building Permit or Occupancy Certificate for any Building in accordance with the terms of this Agreement; and
 - (vii) the rights granted to the Village hereunder and the exercise thereof; and
- (b) that the indemnity and release granted in this Section 9.1 will survive the termination, release or discharge of this Agreement and will be an integral part of the Section 219 Covenant granted herein.

**ARTICLE 10
MISCELLANEOUS & INTERPRETATION**

10.1 Further Assurances

Each of the Parties must at all times execute and deliver at the request of the other all such further documents, deeds and instruments, and do and perform such other acts as may be reasonably necessary to give full effect to the intent and meaning of this Agreement, including to register this Agreement with the Land Title Office in priority to all liens, charges and encumbrances, except for the Permitted Encumbrances, promptly after execution by the Parties.

10.2 Notice

Any notice, document, communication or tender of monies required or permitted to be given hereunder will be validly given when delivered by hand, e-mail or prepaid registered mail to the Parties as follows:

- (a) If to the Village:

Village of Burns Lake
BOX 570 15 – 3rd Avenue
Burns Lake, British Columbia, V0J 1E0

Attention: Sheryl Worthing
Telephone: 250-693-7587
Email: sworthing@burnslake.ca

(b) If to the Company:

Attention: _____
Telephone: _____
Email: _____

or such other address as the party to whom the notice is sent may specify by notice given in accordance with the provisions of this section. Any such notice, request, demand or other communication given will be deemed to have been given, in the case of delivery by hand, when delivered, in the case of e-mail, when an e-mail is sent if sent at or before 5:00 pm on a Business Day in the place of the recipient, or on the next Business Day if such e-mail is sent on a day which is not a Business Day or if sent after 5:00 pm on Business Day, and in the case of delivery by prepaid registered mail, on the third Business Day following the mailing thereof.

Either party may at any time give notice in writing to the other of any change of address of the party, giving such notice to be given in the manner aforesaid, and from and after giving such notice, the address therein specified will be deemed to be the address of such party for the giving of such notice.

10.3 Force Majeure

The Owner acknowledges and agrees with the Village that in the event the Village is delayed or prevented from performing one or more of its obligations under the terms of this Agreement by reason of an Event of Force Majeure, the time for the performance of such obligation by the Village (and any rights of the Owner predicated on such obligation or obligations) shall be extended by the period during which the condition of an Event of Force Majeure continues to exist. In the event the Village is so delayed or prevented from performing one or more of its obligations, it shall promptly upon becoming aware of the condition of an Event of Force Majeure provide written notice to the Owner of the existence of the Event of Force Majeure specifying the condition giving rise to such Event of Force Majeure.

10.4 No Derogation

Nothing contained or implied herein will derogate from, prejudice or affect the Village's rights, powers, duties or obligations in the exercise of its functions pursuant to the *Community Charter* and the *Local Government Act*, or any other Act of the legislature of the Province of British Columbia, as amended from time to time and the rights, powers, duties and obligations of the

Village under all public and private statutes, bylaws, orders and regulations, all of which may be, if the Village so elects, as fully and effectively exercised in relation to the Lands and the Village as if this Agreement had not been executed by the Owner and the Village.

10.5 Reservation of Powers of Expropriation

Notwithstanding anything contained in this Agreement, the Village, in its regulatory capacity, reserves all rights and powers of expropriation otherwise enjoyed by the Village.

10.6 Time of Essence

Time is of the essence of this Agreement and the conveyance and transfer for which it provides.

10.7 Entire Agreement

This Agreement is the entire agreement between the Parties in respect of its subject matter and neither the Owner nor the Village has given or made representations, warranties, guarantees, promises, covenants or agreements to the other except as expressly set out in this Agreement.

10.8 Enurement

This Agreement enures to the benefit of and is binding upon the Parties and their respective heirs, executors, administrators, successors in title and permitted assigns.

10.9 Modification

This Agreement may not be changed except by an instrument in writing signed by the Parties or by their successors or permitted assigns. Notwithstanding, the Closing Date may be changed by the Parties' agreement through their legal representatives, upon the Parties providing written instruction to their respective legal representatives.

10.10 Interpretation

In this Agreement:

- (a) all dollar amounts referred to in this Agreement are Canadian dollars;
- (b) reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;
- (c) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;
- (d) reference to a particular numbered section or article, or to a particular appendix, is a reference to the correspondingly numbered, appendix or section of this Agreement. The appendices form an essential part of this Agreement; and
- (e) where the word "including" is followed by a list, the contents of the list are not intended to circumscribe the generality of the expression preceding the word "including".

10.11 Assignment

The Parties may not assign this Agreement without the other party's consent.

10.12 Governing Law

This Agreement will be governed by and construed in accordance with the laws of British Columbia.

10.13 Independent Legal Advice

The Owner acknowledges and agrees that it has obtained independent legal advice with respect to the contents and consequences of this Agreement. The Owner further acknowledges and agrees that it has been advised of and understands the effects of the liabilities and obligations contained in this Agreement.

10.14 Joint and Several

If the Owner is comprised of more than one person, firm or body corporate, then the covenants, agreements and obligations of the Owner will be joint and several.

10.15 Further Acts

Each of the Parties hereby covenants and agrees to execute any further and other documents and instruments and to do any further things that may be necessary to fulfill the intention of this Agreement.

10.16 Counterparts

This Agreement may be executed and delivered in any number of counterparts by facsimile or by electronic mail in PDF format with the same effect as if all Parties had all signed and delivered the same document and all counterparts will be construed together to be an original and will constitute one and the same Agreement and may be compiled for registration as a single document.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement as noted on the Form C General Instrument constituting Part 1 of this Agreement on the date written thereon.

SCHEDULE A
Permitted Encumbrances

[List encumbrances appropriate for lands being purchased, delete rest]

LOT A

Legal Notations:

- Nil

Charges, Liens & Interests:

- (a) Covenant CB1382504 registered in favour of His Majesty the King in the Right of the Province of British Columbia
 - (b) Section 219 Covenant, Option to Purchase, Right of First Refusal registered on title to Lot A concurrently with the Village's sale of Lot A
-

LOT B

Legal Notations:

- Nil

Charges, Liens & Interests:

- (a) Section 219 Covenant, Option to Purchase, Right of First Refusal registered on title to Lot A concurrently with the Village's sale of Lot B
-

LOT C

Legal Notations:

- Nil

Charges, Liens & Interests:

- (a) Statutory Right of Way CA3171275 registered in favour of the Village of Burns Lake
- (b) Modification CB1382494 modifying Statutory Right of Way CA3171275 registered in favour of the Village of Burns Lake
- (c) Section 219 Covenant, Option to Purchase, Right of First Refusal registered on title to Lot A concurrently with the Village's sale of Lot C