



City of
Campbell
River

RIPPLE ROCK ESTATES
PROVISION OF WATER
SERVICES FRANCHISE
AGREEMENT APPROVAL
BYLAW

BYLAW 3911, 2023

BYLAWS



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Cover photo by Toni Falk



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**RIPPLE ROCK ESTATES PROVISION OF
WATER SERVICES FRANCHISE AGREEMENT
APPROVAL BYLAW**

Bylaw No. 3911, 2023

ADOPTED August 17, 2023

PURPOSE

A bylaw to authorize the Mayor and Chief Administrative Officer to execute a franchise agreement granting 1127921 BC LTD. (the "Contractor") the right to construct a water supply system and to provide water services through that water supply system to lands located in the City of Campbell River.

PART 1: Title

1.1 This bylaw may be cited for all purposes as RIPPLE ROCK ESTATES PROVISION OF WATER SERVICES FRANCHISE AGREEMENT APPROVAL BYLAW 3911, 2023

PART 2: Franchise Agreement

WHEREAS the Contractor intends to construct a bare land strata development, as that term is defined in the *Strata Property Act*, S.B.C. 1998, c. 43, on the lands with the following legal description:

PID #: 024-937-771.

Lot 1 District Lot 29 Sayward Land District Plan VIP 71671 Except Plan VIP 74790 and VIP 75186;

(referred to in this Bylaw as “the Lands”)

AND WHEREAS the Contractor intends to supply water to the Lands;

AND WHEREAS section 22 of the *Community Charter*, S.B.C. 2003, c. 26 authorizes the Council of the City of Campbell River to, by bylaw adopted with the approval of the elector, enter into a franchise agreement granting the Contractor an exclusive or limited franchise for the provision of water through a water supply;

NOW THEREFORE, the Council of the City of Campbell River, in open meeting assembled, enacts as follows:

1. The Council of the City of Campbell River is hereby authorized to enter into a franchise agreement with the Contractor commencing on September 1, 2023.
2. The franchise agreement will be in the form attached hereto as “Schedule A” (the “Franchise Agreement”).
3. The Mayor and the Chief Administrative Officer are hereby authorized to enter into the Franchise Agreement and to do all things necessary in the execution of the said Franchise Agreement.

PART 3: Severability

If any section, subsection, paragraph, clause, phrase or word within this bylaw is for any reason held to be invalid by the decision of a court or competent jurisdiction, such decision does not affect the validity of the remaining portions of this bylaw.

READ THE FIRST TIME this 29th day of June 2023

READ THE SECOND TIME this 29th day of June 2023

READ THE THIRD TIME this 29th day of June 2023

ADOPTED this 17th day of August 2023

Signed by the Mayor and City Clerk this 17th day of August 2023



Kermit Dahl, MAYOR



Sheila Girvin, CORPORATE OFFICER

SCHEDULE "A"



Land Title Act
Charge
General Instrument - Part 1

1. Application

DENTONS CANADA LLP
20th Floor, 250 Howe Street
Vancouver BC V6C 3R8
6046876440

Ripple Rock - Waterworks Covenant
591532.1

2. Description of Land

PID/Plan Number	Legal Description
024-937-771	LOT 1 DISTRICT LOT 29 SAYWARD DISTRICT PLAN VIP71671 EXCEPT PART IN PLAN VIP74790 AND VIP75186

3. Nature of Interest

Type	Number	Additional Information
COVENANT		Section 219
PRIORITY AGREEMENT		Section 5, Page 7 Granting Covenant herein priority over Mortgage CA9792481 and Assignment of Rents CA9792482.

4. Terms

Part 2 of this Instrument consists of:
(b) Express Charge Terms Annexed as Part 2

5. Transferor(s)

1127921 B.C. LTD., NO. BC1127921
FIRST WEST CREDIT UNION, NO. FI-156

6. Transferee(s)

CITY OF CAMPBELL RIVER
301 ST. ANN'S ROAD
CAMPBELL RIVER BC V9W 4C7

7. Additional or Modified Terms



8. Execution(s)

This Instrument creates, assigns, modifies, enlarges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this Instrument, and acknowledge(s) receipt of a true copy of the filled standard charge terms, if any.

Witnessing Officer Signature

Execution Date

YYYY-MM-DD

Transferor / Transferee / Party Signature(s)
1127921 B.C. LTD.
By their Authorized Signatory

Print Name:

Print Name:

Officer Certification

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this Instrument.

Witnessing Officer Signature

Execution Date

YYYY-MM-DD

Transferor / Transferee / Party Signature(s)
FIRST WEST CREDIT UNION
By their Authorized Signatory

Print Name:

Print Name:

Officer Certification

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this Instrument.



Witnessing Officer Signature

Execution Date

YYYY-MM-DD

Transferor / Transferee / Party Signature(s)

CITY OF CAMPBELL RIVER
By their Authorized Signatory

Print Name:

Print Name:

Officer Certification

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

Electronic Signature

Your electronic signature is a representation that you are a designate authorized to certify this document under section 168.4 of the *Land Title Act*, R.S.B.C. 1996 c.250, that you certify this document under section 168.41(4) of the act, and that an execution copy, or a true copy of that execution copy, is in your possession.

TERMS OF INSTRUMENT - PART 2

WATERWORKS COVENANT

WHEREAS:

- A. The Developer is the registered owner in fee simple of the land to which the City of Campbell River Zoning Amendment Bylaw No. 3802, 2020 applies, namely a portion of:
- PID: 024-937-771
Lot 1 District Lot 29 Sayward Land District Plan VIP 71671 Except Plan VIP 74790 and
VIP 75186 Managed Forest 0022.
(hereinafter referred to as the "Lands").
- B. The Lands are entirely within the City of Campbell River limits.
- C. The Developer intends to construct a bare land strata development, as that term is defined in the *Strata Property Act*, SBC 1998, c.43 (the "SPA") known as Ripple Rock Estates on the Lands (the "Development").
- D. The Development is currently anticipated to consist of 188 residential bare land strata lots plus common property (the "Strata").
- E. The Developer will be the "owner developer" of the Strata, as that term is defined in the SPA.
- F. In accordance with the City of Campbell River Sustainable Official Community Plan (the "OCP"), potable water service will not be extended from other parts of the City of Campbell River to the Lands. Therefore, to service the Lands, the Developer intends to construct the Waterworks which will be privately owned and operated.
- G. The Developer will own and operate the Waterworks until it owns less than fifty percent (50%) of the bare land strata lots, at which point the Waterworks and the Water Licence will be transferred to the strata corporation formed upon the registration of the Strata in the Land Title Office (the "Strata Corporation").
- H. The Province of British Columbia requires the City of Campbell River to be a co-applicant and licensee on the Water Licence, as contemplated herein. Licensees have specific rights and responsibilities regarding potable water systems as set out in the Water Enactments including Section 29 of the WSA.
- I. The City will not incur any costs associated with the Waterworks, Water Licence or in relation to this Agreement.
- J. In relation to the development of the Lands, the Developer has agreed to grant to the City the Section 219 Covenant contained herein.
- K. Section 219 of the *Land Title Act* RSBC 1996 Chapter 250 (the "LTA") permits registration of a covenant in favour of a municipality in respect of the use of land or the use of a building on or to be erected on land and that land is or is not to be built on except in accordance with the covenant and that land is not to be subdivided except in accordance with the covenant.
- L. This Agreement is a partnering agreement for the purposes of Section 21 of the *Community Charter* SBC 2003, c. 26.

NOW THEREFORE in consideration of the covenants herein contained and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto covenant and agree as follows:

1. Definitions

In this Agreement, including, without limitation, in the recitals to this Agreement, the following words, terms, and expressions have the respective meanings set out below:

"**Approving Officer**" has the meaning attributed to it in the LTA, and includes any person lawfully appointed to make decisions on behalf of the Approving Officer.

"**Certificate of Completion**" means written certification by the Consulting Engineer that the Waterworks or a defined portion of the Waterworks has been completed to the satisfaction of the Consulting Engineer in accordance with this Agreement and all applicable amendments.

"**City**" means the City of Campbell River.

"**Complete**" or "**Completion**" means, with respect to the Waterworks, or a portion thereof, completion to the satisfaction of the Consulting Engineer, as certified in writing.

"**Consulting Engineer**" means a professional engineer registered in the Province of British Columbia who is a member in good standing of Engineers and Geoscientists BC and employed or retained by the Developer in connection with the design and construction of the Waterworks system and the Developer's obligations contained in this Agreement.

"**Default**" has the meaning assigned to that term in Section 10.6.

"**Developer**" means 1127921 B.C. Ltd. (Inc. No. BC1127921) and its permitted successors and assignees.

"**Maintain**" or "**Maintenance**" means to monitor the Waterworks for damage and defects including leaks, respond to Waterworks user complaints and concerns related to the Waterworks, and to repair, reconstruct, and / or replace the Waterworks or portions thereof as required in accordance with all provincial enactments.

"**MOF**" means the Ministry of Forests (British Columbia).

"**Operations**" means the actions required to ensure that the Waterworks are functioning according to their intended use.

"**Operations and Maintenance Cost**" means the annual cost, as estimated by the Operator and the Consulting Engineer, to ensure the Waterworks constructed within the Development are maintained and function as intended and as required.

"**Operator**" means a firm which is qualified to operate and maintain the Waterworks after construction and retained by the Developer to do so.

"**Security**" means the total amount of the cash or Letter of Credit deposited by the Developer pursuant to Section 10 of this Agreement.

"**Subdivision and Development Servicing Bylaw**" means the City of Campbell River "Subdivision and Development Servicing Bylaw No. 3419, 2010", as amended or replaced from time to time.

"**Transfer Date**" has the meaning given to that term in Section 11.1.

"**Water Enactments**" means the WSA, the *Groundwater Protection Regulation*, BC Reg 75/2021, *Drinking Water Protection Act*, SBC 2001, c. 9, and *Drinking Water Protection Regulation*, BC Reg 200/2003.

"Water Licence" means a licence as that term is defined in the WSA and, for the purpose of this Agreement, the licence to be secured in respect of the Development on the Lands.

"Waterworks" means the water well, potable water treatment system, water reservoir, potable water pumping and distribution system (including appurtenances thereto, individual lot water services within common property, and power and backup power connections and equipment).

"WSA" means the *Water Sustainability Act*, SBC 2014, c.15, as amended or replaced from time to time.

2. Interpretation

2.1. In this Agreement:

- (a) words importing the singular number include the plural and vice versa and words importing the neuter gender include the masculine and the feminine genders;
- (b) the division of this Agreement into articles and sections and the insertion of headings are for convenience only and will not affect the construction or the interpretation of this Agreement;
- (c) references to any article, section or schedule will, unless the context otherwise requires, mean that article, section or schedule of this Agreement;
- (d) every reference to each party is deemed to include the heirs, executors, administrators, personal representatives, successors, servants, employees, agents, contractors, officers, licensees and invitees of such party, wherever the context so requires or allows;
- (e) the words "include" and "including" are to be construed as meaning "include without limitation" and "including without limitation";
- (f) all payments to be made will be deemed to be payments in lawful currency of Canada;
- (g) reference to "business day" means all days other than Saturday, Sunday, and statutory holidays in the Province of British Columbia;
- (h) reference to "party" and "parties" means the one or more parties to this Agreement, as the context demands;
- (i) reference to a whole, for example, the "Lands" and the "Development", includes reference to a portion thereof; and
- (j) unless expressly stated otherwise, all references to enactments refer to enactments of the Province of British Columbia, as amended or replaced from time to time. All reference to bylaws and policies refers to the bylaws and policies of the City, as amended or replaced from time to time.

3. Acknowledgements

3.1. The Developer acknowledges and agrees that:

- (a) except as expressly provided, nothing in this Agreement will relieve the Developer from any obligation or requirement arising under any applicable statute, bylaw, or regulation in respect of the use, subdivision, and development of the Lands; and
- (b) nothing contained or implied in this Agreement will prejudice or affect the City's rights, powers, duties, or obligations in the exercise of its functions pursuant to the *Local Government Act*, the *Community Charter* or other statutes, bylaws, orders, and regulations.

4. Cost of the Developer

- 4.1. All obligations of the Developer under this Agreement will be at the Developer's expense unless expressly set out to the contrary herein.

SECTION 219 OF THE LAND TITLE ACT

5. Grant of the Section 219 Covenant

- 5.1. The Developer hereby covenants and agrees with the City, as a covenant in favour of the City pursuant to Section 219 of the *Land Title Act*, it being the intention and agreement of the Developer that the provisions in this Agreement be annexed to and run with and be a charge upon the Lands, and that the Lands will be subdivided, built, and used only in strict compliance with the terms and conditions of this Agreement.
- 5.2. Except with the prior written consent of the City, the Lands will not be occupied, built on, or used except in connection with the construction, Operations, and Maintenance of the Waterworks unless and until all the covenants and agreements of the Developer have been satisfied in accordance with this Agreement.

6. Water Licence

- 6.1. The Developer shall pay all fees, prepare all materials and make all applications required to secure and continue the Water Licence.
- 6.2. Subject to section 6.1, the City hereby acknowledges and agrees to be a co-applicant and the sole licensee for the Water Licence as required and to provide such signatures or other information to the MOF, governmental body, or agency as may be required for the approval of the Water Licence application and subsequent transfer to the Strata Corporation.
- 6.3. Subject to the unfettered discretion of the City's Council, the City shall not oppose the Water Licence application or support any party opposed to the application.
- 6.4. The City shall respond promptly when requested by the MOF, the Developer, or the Consulting Engineer to reasonably provide information relative to the Water Licence application or any supporting documents thereto.
- 6.5. The City shall ensure all public notices that the City is required to issue in respect of this Agreement have been posted and delivered to the Developer, and the Developer shall pay all costs related to the notices.
- 6.6. The City shall apply to the City's Council to adopt a bylaw pursuant to section 22(1)(b) of the *Community Charter* and the Developer shall pay all costs related to adoption of the bylaw.

7. Design, Construction, and Approvals for the Waterworks

- 7.1. The Developer shall at its cost be responsible for:
- (a) the design, construction and commissioning of the Waterworks; and
 - (b) obtaining all required government approvals to permit the construction and commissioning of the Waterworks including any approvals required pursuant to the

- 7.3. Except where otherwise approved by the City, the Waterworks shall be certified as designed, constructed, and commissioned in accordance with generally accepted good engineering and construction practices by the Consulting Engineer, and where applicable the provincial *Bare Land Strata Regulations* BC Reg 75/78, the Water Enactments, and in accordance with any Provincial or Federal standards which may apply.
- 7.4. The Developer shall provide the City with design drawings and record drawings for the Waterworks after each phase of the Development is constructed.

8. Operations and Maintenance of the Waterworks

- 8.1. The Waterworks or any portion thereof shall not be operated for supplying drinking water until the Consulting Engineer issues a Certificate of Completion for the applicable phase of the Waterworks.
- 8.2. The Developer shall be responsible for ensuring the Waterworks are operated and maintained in accordance this Agreement and with applicable government licences, legislation, regulations, and commonly accepted industry practices.
- 8.3. Until such time as the Developer has transferred the Waterworks to the Strata Corporation, the Developer shall, at its cost:
- (a) retain an Operator to operate and oversee the Waterworks;
 - (b) provide the City with proof of the Operator's qualifications, the name(s) and contact information of the Operator's local representative(s), and confirmation of the expiry date of any contract the Developer has with the Operator (the "Operator Contract"); and
 - (c) not change the Operator unless written notice is provided to the City.
- 8.4. The Developer shall ensure that the Operator's designated personnel have Water Treatment Plant and Water Distribution Certifications from the Environmental Operators Certification Program (EOCP) commensurate with the EOCP classifications of the Waterworks.
- 8.5. The Operator Contract shall be for a term that does not expire until at least 51% of the strata lots in the Strata Development have been transferred to owners other than the Developer.
- 8.6. The Developer shall notify in writing (which may be way of a disclosure statement provided to purchasers pursuant to the *Real Estate Development Marketing Act*), the first purchasers of strata lots within the Strata of the following:
- (a) notice that the Waterworks are privately owned, operated, and maintained;
 - (b) the Operator's contact information;
 - (c) a copy of this Agreement; and
 - (d) the Strata Corporation and owner of Strata Lots shall not refuse water service connections after the Waterworks are transferred to the Strata Corporation.
- 8.7. The Operator's contact information, including emergency contact information, will be displayed on a sign mounted onto the water treatment location fence, which will be along the common property roadway adjacent to the Waterworks water treatment location and the sign shall have the following specifications:
- (a) will measure at least 60 centimeters by 60 centimetres; and
 - (b) will be printed on a white background with black letters (at least 60 point Arial font or similar in English).

- 8.8. The City shall have no duty or responsibility in relation to the Operation and Maintenance, inspection, or repair of the Waterworks.

9. Fees and Penalties

- 9.1. The Developer shall pay all fees or penalties charged by any government or agency in connection with the construction, Operations and Maintenance of the Waterworks ("Fees and Penalties").

10. Security

- 10.1. As security for the performance of the Operations and Maintenance Costs and for payment of Fees and Penalties, the Developer shall deposit with the City herewith:
 - (a) cash;
 - (b) an irrevocable letter of credit, which provides for automatic extension without amendment; or
 - (c) a combination of (a) and (b) above,in a cumulative amount determined under Section 10.2 herein (the "Security").
- 10.2. The amount of the Security shall be determined by the Consulting Engineer in a written notice to the City based on:
 - (a) five (5) times the estimated annual Operations and Maintenance cost including taxes; plus
 - (b) five (5) times the estimated annual fees charged by any agency to allow for drawing water from the well, operating the system, distributing or selling water, and for any other reason known to the Consulting Engineer; plus
 - (c) an emergency repair allowance, in an amount equal to 10% percent (10.0%) of the cost of construction of the Waterworks to a maximum of \$250,000.
- 10.3. The amount of the initial amount of the Security will be calculated and provided to the City by the Developer after the first phase of the Waterworks is constructed but prior to registration of the first phase of the Strata in the Land Title Office.
- 10.4. The amount of the Security will be recalculated by the Consulting Engineer:
 - (a) after each subsequent phase of the Waterworks is constructed but prior to registration of each subsequent Strata phase in accordance with the Land Title Act; and
 - (b) each year on the anniversary of this Agreement, unless otherwise agreed to in writing by both parties to this Agreement, at which time, the Security amount calculated in accordance with Section 10.2(c) for phases constructed in previous years will be increased by the most recent annual amount of increase of the Consumer Price Index (all goods, Canada).
- 10.5. Without limiting section 10.4, the Security may be reduced at any time with the approval of the City in writing, evidenced by the signature of the Approving Officer.
- 10.6. It shall be considered a "Default" by the Developer under this Agreement if any one or more of the following events occurs:
 - (a) the Developer fails to require the Operator to carry out the Operations or Maintenance of the Waterworks;
 - (b) if after receiving notice requiring payment of Fees and Penalties, the Developer fails to pay such Fees and Penalties within a timely manner;

Ripple Rock – Water Agreement
NATDOCS67149915IV-5

- (c) the Developer commits an act of bankruptcy or makes a proposal or general assignment for the benefit of its creditors;
 - (d) an order is made or a resolution passed or petition filed for the liquidation or winding-up of the Developer;
 - (e) a receiver or receiver-manager of the Developer, or the Lands or any part thereof, is appointed or any encumbrance-holder takes possession of the Lands or any part thereof; and
 - (f) the Developer is dissolved or struck from the provincial registry of companies.
- 10.7. The City may draw upon the Security to pay for Operations and Maintenance Costs or Fees and Penalties, as applicable, if:
- (a) a Default other than a Default under Section 10.6(a) or 10.6(b) occurs; or
 - (b) in the case of a Default under Section 10.6(a) or 10.6(b), the City has given the Developer twenty (20) days' notice of its intention to draw on the Security and the Developer has failed to remedy the Default within the twenty (20) day notice period or in the case of a Default which cannot be remedied within twenty (20) days, the Developer has failed to commence to remedy the Default within twenty (20) days.
- 10.8. If after drawing upon the Security to remedy a Default under Section 10.6(a) or 10.6(b), the cost of remedying such Default is greater than the Security held by the City, the Developer shall pay the amount of the deficiency to the City within thirty (30) days upon receipt of the City's invoice for the cost to remedy such Default, whether or not the City has incurred any costs in relation to the Default.
- 10.9. The City will be entitled to reimbursement by the Developer for all costs and expenses reasonably incurred by the City in correcting a breach of the Developer's obligation under this Agreement. The Developer shall reimburse the City within thirty (30) days of receipt of the City's invoice of such costs and expenses. If the Developer has not paid the costs and expenses referred to in this Section 10.9, the City may recover such amounts from the Security.
- 10.10. If the City pays any Fees and Penalties on behalf of the Developer, the City will have the right to charge an administrative fee equal to 20% of the total Fees and Penalties paid by the City.
- 10.11. In the event of a Default, the City may complete Operations and Maintenance itself or through contractors employed by the City, and may:
- (a) use the Security to recover such amounts reasonably incurred by the City, or
 - (b) recover such amounts reasonably incurred as a debt due and owing to the City.
- 10.12. The cost of Operations and Maintenance work which is payable to the City by the Developer shall include the actual costs incurred by the City to carry out Operations and Maintenance plus the costs of engineering, supervision, legal services, contract administration, tendering, surveying, other professional services, and all other costs reasonably required for completion of Operations and Maintenance by the City.

11. Transfer of Water Licence and Waterworks to the Strata

- 11.1. The obligations of the Developer and the City under this Agreement, including the obligation of the Developer to provide the Security in Section 10, shall cease on the later of:
- (a) the Water Licence being transferred to the Strata Corporation; and

(b) the Waterworks being transferred to the Strata Corporation, (the "Transfer Date"). The City shall return the Security or so much of it as may then remain unapplied to the Developer (without interest) and provide a registrable discharge of this Agreement within sixty (60) days of the Transfer Date.

- 11.2 The Developer shall be responsible for all costs associated with the transfer of the Waterworks and the Water Licence to the Strata Corporation. The City agrees, as the licensee for the Water Licence, to transfer the Water Licence to the Strata Corporation as soon as this is possible under applicable laws.

12. Entry On Land

- 12.1 The Developer shall permit the City, its agents, employees and contractors to enter upon the Lands at any time to carry out such actions in connection with the construction, Operation and the Maintenance of the Waterworks, provided the City has given the Developer reasonable notice of such entry.

13. Indemnification

- 13.1 The Developer hereby indemnifies and saves harmless the City, its officers, employees, Council members, contractors, and agents:
- (a) from and against all damages, costs, losses, or expenses incurred by the City as a result of the Developer's conduct in relation to this Agreement, including any breach of this Agreement;
 - (b) from and against all expenses and costs which may be incurred by reason of liens, non-payment of labour or materials, Workers' Compensation assessments, employment insurance, federal or provincial taxes, or union dues; and
 - (c) from and against any claims, actions, or proceedings brought or alleged by any person relating to the Operations and Maintenance of the Waterworks by the Developer or by any person prior to the City transferring the Water Licence to the Strata Corporation.
- 13.2 This indemnity shall survive the termination of this Agreement provided that the subject matter of the indemnification arose during the term of this Agreement.
- 13.3 Following the creation of the Strata Corporation, and in any event on the occurrence of the events in section 11.1(a) and (b), Developer shall cause the Strata Corporation to grant the City a covenant satisfactory to the City continuing the indemnities set out in this Section 13.

14. Insurance

- 14.1 The Developer shall, or shall cause the Operator to, take out and maintain at all times for the duration of this Agreement, insurance at its sole expense.
- (a) Such insurance shall include commercial general liability insurance against claims for bodily injury including death and property damage or loss arising from it performing its obligations under this Agreement, in an amount of not less than five million dollars (\$5,000,000) per occurrence.
 - (b) Such insurance shall name the City as an additional insured and shall contain a cross-liability or severability of interest clause, so the City and the Developer are insured in the same manner and to the same extent as if individual policies had been issued to each.
 - (c) The Developer shall provide to the Approving Officer proof in writing of such insurance before commencing operation of the Waterworks and annually thereafter or when requested by the Approving Officer.

- (d) The policy of insurance shall contain a provision requiring the insurer to use reasonable efforts to give to the City not less than thirty (30) days prior written notice before any material alteration or cancellation of the policy is effective.
- (e) Nothing in this Agreement shall relieve or excuse the Developer from maintaining any other insurance that a prudent owner or developer of land, or a prudent contractor, would maintain, and nothing in this Agreement shall constitute a warranty or representation by the City that the types and amounts of insurance coverage required are adequate for any purpose.

15. Notices

- 15.1. All notices, requests, demands, elections, and other communications hereunder shall be in writing and shall be deemed to have been duly given only if personally delivered or mailed by prepaid registered mail to the respective parties as follows:
 - (a) To the City at:
301 St. Ann's Road, Campbell River, British Columbia V9W 4C7
 - (b) To the Developer at:
6805 Island Highway, Campbell River, British Columbia V9H 1R7,or to such other address as any party may from time to time notify the other in accordance with this Section 15.1.
- 15.2. Any writing given in the manner set out above shall be deemed given if and when personally delivered, or if mailed in the manner therein provided, shall be deemed given forty-eight (48) hours after posting.
- 15.3. In the event of disruption or threatened disruption of regular mail services by strike or threatened strike, all such notices, requests, demands, elections, and other communications shall be deemed to have been duly given only if personally delivered.

16. Transfer to a Third Party

- 16.1. The Developer will not sell, transfer or otherwise dispose of any fee simple or leasehold interest in the whole or any part of the Lands to any person, trust, corporation, partnership or other entity (the "Purchaser") (other than the transfer of an interest (i) to a purchaser of a bare land strata lot, or (ii) by way of a mortgage, where the mortgagee is not registered in priority to this Agreement) unless the Developer includes in any agreements relating to such sale, transfer or disposition a covenant binding upon the Purchaser in favour of the City whereby the Purchaser:
 - (a) acknowledges that the Purchaser is aware of the terms of this Agreement; and
 - (b) assumes and agrees to observe and perform the terms of this Agreement.
- 16.2. Except upon transfer of the Waterworks and Water License to the Strata Corporation or upon a transfer of the Lands, Waterworks and Water License to a Purchaser pursuant to Section 16.1, the Developer's obligation under the Agreement shall not be sold, transferred, assigned or otherwise deposited without prior written consent of the City, such consent not to be unreasonably withheld.

17. General

- 17.1. The recitals to this Agreement are incorporated into the body of this Agreement as true statements of fact.

- 17.2. The Agreement shall be interpreted under and governed by the laws of the Province of British Columbia and all disputes arising are subject to the exclusive jurisdiction of the courts of British Columbia.
- 17.3. The Developer covenants and agrees for itself, its heirs, executors, successors, and assigns, that it will at all times perform and observe the requirements and restrictions hereinbefore set out and they shall be binding upon the Developer only during the period of its ownership of any interest in the Lands, with the exception that Section 13.2 hereof shall survive the term of the Agreement.
- 17.4. In the event one party breaches this Agreement, that party shall be responsible for all damages, losses, costs, and expenses, including among other things, full-indemnity legal fees and disbursements, incurred by the other party in enforcing this Agreement.
- 17.5. Notwithstanding anything contained herein, the Developer shall not be liable under any of the terms, covenants or conditions contained in this Agreement where such liability arises by reason of any act or omission occurring after the Developer ceases to have any further interest in the Lands and/or the Waterworks, whichever occurs first, and the Developer shall be released of all future obligations on the part of the Developer hereunder after the Developer ceases to have any further interest in the Lands and/or the Waterworks.
- 17.6. Each party will from time to time execute and deliver all such further documents and instruments and do all acts and things as the other party may reasonably require to carry out or better evidence or perfect the full intent and meaning of this Agreement.
- 17.7. This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.
- 17.8. Nothing contained or implied in this Agreement shall prejudice or affect the rights and powers of the City and its Council in the exercise of its functions under any public or private statutes, bylaws, orders and regulations, and without limiting the generality of the foregoing the construction of the Waterworks shall not confer directly or indirectly any exemption or right of set-off from development cost charges, application fees, user fees, or other fees or charges, except as statutorily required.
- 17.9. In the event any provision or part of this Agreement is found to be invalid or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- 17.10. This Agreement may be executed in any number of original counterparts and delivered by electronic communication.

The Parties acknowledge that this Agreement has been duly executed and delivered by executing the Form C attached hereto.

CONSENT AND PRIORITY AGREEMENT

Between:

CITY OF CAMPBELL RIVER
(the "Subsequent Chargeholder")

And:

FIRST WEST CREDIT UNION
(the "Prior Chargeholder")

WHEREAS:

- A. The owner, or predecessor in title, of that parcel of land and premises within the City of Campbell River that are legally described in Item 2 of the General Instrument - Part 1 of this *Land Title Act* Form C (the "Land") granted the Prior Chargeholder a Mortgage and Assignment of Rents against title to the Land registered in the Land Title Office under numbers CA9792481 and CA9792482 (together, the "Prior Charge");
- B. The owner has agreed to grant the Subsequent Chargeholder a covenant to be registered against title to the Land pursuant to section 219 of the *Land Title Act* (the "Subsequent Charge").

NOW THEREFORE, in consideration of the sum of ONE DOLLAR (\$1.00) and other good and valuable consideration, the Prior Chargeholder hereby grants to the Subsequent Chargeholder priority over the Prior Charge and covenants and agrees to subordinate and postpone all its right, title and interest in and to the Land with the intent and with the effect that the interest of the Subsequent Chargeholder will rank ahead of the Prior Charge as though the Subsequent Charge had been executed, delivered and registered in time prior to the registration of the Prior Charge.

IN WITNESS WHEREOF the parties hereby acknowledge that this priority agreement has been duly executed and delivered by executing the attached Land Title Office Form C.



City of
**Campbell
River**

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