

# MASTER DEVELOPMENT AGREEMENT

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## MASTER DEVELOPMENT AGREEMENT

**THIS AGREEMENT** is made the 7<sup>th</sup> day of September, 2005.

BETWEEN:

### THE CORPORATION OF THE CITY OF VICTORIA

City Hall, #1 Centennial Square  
Victoria, B.C. V8W 1P6

(the "**City**")

OF THE FIRST PART

AND:

### DOCKSIDE GREEN LTD.

(#BC0716742)

c/o 510 - 815 West Hastings Street  
Vancouver, B.C. V6C 1B4

(the "**Developer**")

OF THE SECOND PART

### WHEREAS

- A. The City is the registered owner of the City Lands, as defined in this Agreement;
- B. By a Request for Expressions of Interest issued in June, 2004 (the "**RFEI**"), the City sought information from parties interested in submitting a detailed proposal for the purchase and development of the City Lands;
- C. Vancity Enterprises Ltd. and Windmill Development Group Ltd. (hereinafter collectively referred to as the "**Original Developer**") made a submission in response to the RFEI and the Original Developer was included in a short list of proponent to whom a Request for Proposals dated September 10, 2004 (the "**RFP**") was issued;
- D. The Original Developer submitted the Developer's Proposal for the purchase and development of the City Lands in response to the RFP and was selected by the City as the successful proponent, and advised of that fact on January 19, 2005;

- E. The Original Developer has now assigned all of its rights under the RFP and the Developer's Proposal to the Developer, a corporation which is wholly owned by the Original Developer;
- F. Under the terms of the Sale Contract, the Developer has agreed to purchase and to remediate the City Lands;
- G. The Developer has entered into an agreement to purchase the Princess Mary Lands, and with the consent of the registered owner of the Princess Mary Lands (as at the date of this Agreement) has agreed with the City that the Princess Mary Lands shall be developed in conjunction with the City Lands under the terms of this Agreement;
- H. The City has initiated the following processes with respect to the Dockside Lands:
  - (a) an application to rezone the Dockside Lands as set out in the City of Victoria Zoning Regulation Bylaw No. 05-85 (the "**Rezoning Bylaw**"), a copy of which is attached as Schedule A;
  - (b) an application to amend the City's Official Community Plan so as to:
    - (i) incorporate a new set of Development Guidelines for the Dockside Lands (the "**Design Guidelines**"), a copy of which is also attached as Schedule B; and
    - (ii) amend the land use designations for the Dockside Lands; and
  - (c) consequential applications to amend the Victoria West Neighbourhood Plan, the Victoria Harbour Plan and Design Guidelines for the Songhees Area of Victoria West;
- I. The Developer has submitted a Development Permit application for the development of the first phase of the Development within the Dockside Lands;
- J. The parties wish to set out in this Agreement their agreement as to the manner in which the Dockside Lands will be developed, including provision and construction of certain Amenities by the Developer, the Developer's obligation to provide affordable housing as set out in Part 9.0, the construction of off-site and on-site services, and the phased development of the Dockside Lands, following adoption of the Rezoning Bylaw and the Design Guidelines.

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration for the mutual promises exchanged herein, the parties agree as follows:

## 1.0 DEFINITIONS

1.1 In this Agreement:

**“Adaptable Housing Guidelines”** – means the guidelines as set out in Schedule O.

**“Affordable Housing”** means housing which costs (rent or mortgage plus taxes and including 10% down payment) 30% or less of a household’s gross annual income, targeting households with an income of \$30,000 to \$60,000, as increased from time to time by the increase in the Consumer Price Index (All Items) for Greater Victoria from the date of this Agreement to the date when any relevant determination under the Affordable Housing provisions of this Agreement must be made.

**“Agreement”** or **“Master Development Agreement”** or **“MDA”** means this Agreement.

**“AIP”** has the same meaning as under the Sale Contract.

**“Amenities”** mean the amenities that are to be provided by the Developer, as listed in the left hand column of Schedule D to this Agreement, and without limitation includes the Public Amenities that are referred to in Part 8.0 of this Agreement.

**“Amenity Fund”** means the fund to be established by the City under section 8.18 of this Agreement.

**“Amenity Completion Date”** means the date by which any particular Amenity is to be constructed by the Developer, referred to in section 8.3, and subject to extension as contemplated under section 8.7.

**“Applicable LEED Standard”** means the applicable LEED Standard specified in section 11.1 that applies to buildings constructed on the Dockside Lands, as such Standard exists as of the date of this Agreement.

**“Approving Officer”** means the approving officer for the City of Victoria, as appointed from time to time under the provisions of the *Land Title Act*.

**“City Lands”** means the parcels to be purchased by the Developer under the Sale Contract, legally described as:

PID 017-941-911, Lot 8, Plan VIP53097, District Lot 119, Esquimalt District

PID 024-236-462, Lot G, Plan VIP67690, District Lot 119, Esquimalt District

PID 023-149-779, Lot 1, Plan VIP61709, District Lot 119, Esquimalt District, Except that part in Plan VIP66539

PID 024-236-446, Lot E, Plan VIP67690, District Lot 119, Esquimalt District

PID 018-375-405, Lot A, Plan VIP56972, District Lot 119, Esquimalt District

PID 024-236-438, Lot D, Plan VIP67690, District Lot 119, Esquimalt District

PID 017-941-865, Lot 4, Plan VIP53097, District Lot 119, Esquimalt District

(for greater certainty, the City Lands do not include the Princess Mary Lands, Point Ellice Park, or the Federal Lot).

**“Council”** means the Council of The Corporation of the City of Victoria.

**“CPTED”** means the Crime Prevention Through Environmental Design Guidelines developed by the City’s Planning Department (as amended January, 2004).

**“DA-A”, “DA-B”, “DA-C”, “DA-D”, “DA-E”, and “DA-F”** respectively, mean the development areas of the Dockside Lands described as such on the site plan attached as Schedule C to this Agreement.

**“Design Guidelines”** means the City of Victoria design guidelines titled “Design Guidelines for the Dockside Lands” dated September, 2005.

**“Developer’s Proposal”** means the proposal submitted by the Original Developer in response to the RFP.

**“Development”** means the development that the Developer will construct on the Dockside Lands as contemplated under this Agreement.

**“Development Area”** means each separate legal parcel of the Dockside Lands that is created by subdivision for development purposes.

**“Development Permit”** means a development permit issued by the City for the development of the Dockside Lands, whether in stages or in whole, as agreed upon by the City and the Developer.

**“Development Phase”** means each development of a portion of the Dockside Lands, as approved under a Development Permit.

**“Director of Engineering”** means the City’s Director of Engineering, as appointed from time to time.

**“Director of Parks”** means the City’s Director of Parks, Recreation and Community Development, as appointed from time to time.

“**Director of Planning**” means the City’s Director of Planning, as appointed from time to time.

“**Dispute Resolution**” means the process set out in Part 19.0 of this Agreement.

“**Dockside Area**” means all of the lands to which the Design Guidelines apply, including the City Lands, the Princess Mary Lands, Point Ellice Park and the Federal Lot.

“**Dockside Lands**” means the City Lands and the Princess Mary Lands.

“**Extreme Emergency**” means, with respect to the on-site sewage treatment systems referred to in Part 12.0 of this Agreement, the failure of the on-site sewage treatment system and any on-site back-up system, such that the only available method of sewage disposal and treatment is through a connection to the City’s sanitary sewer system.

“**Federal Lot**” means the lands within DA-F, as shown on Schedule C.

“**Floor Space Ratio**” has the same meaning as under the City of Victoria Zoning Regulation Bylaw No. 80-159, unless amended through the rezoning process contemplated under this Agreement.

“**Galloping Goose Trail**” means the regional trail that extends through Point Ellice Park and along Harbour Road.

“**Greenway**” means the greenway walkway to be constructed on the Dockside Lands as one of the Amenities provided by the Developer.

“**LEED**” or “**LEED Standard**” refers to the rating system for “green” buildings, as published by the Canada Green Building Council or the United States Green Building Council, or its respective successor.

“**Market Affordable Housing Unit**” means each residential unit in the Development to be sold by the Developer pursuant to section 9.3.

“**Ministry**” means the Ministry of Environment, or its successor.

“**Non-Market Unit**” means each residential Unit in the Development to be sold by the Developer pursuant to section 9.2.

“**Point Ellice Park**” means the City lands legally described as:

PID 017-941-873  
Lot 5, Plan VIP53097, District Lot 119, Esquimalt District.

**“Princess Mary Lands”** means the lands legally described as:

PID 024-236-454

Lot F, District Lot 119, Esquimalt District, Plan VIP67690

PID 024-011-061

Lot A, District Lot 119, Esquimalt District, Plan VIP66539

PID 023-149-787

Lot 2, District Lot 119, Esquimalt District, Plan VIP61709

**“Public Amenities”** means those Amenities referred to in Schedule G to this Agreement.

**“Project”** means the Developer’s remediation of the City Lands under the terms of the Sale Contract, and the Developer’s development of the Dockside Lands under this Master Development Agreement.

**“Sale Closing Date”** has the same meaning as under the Sale Contract.

**“Sale Contract”** means the contract of purchase and sale governing the sale of the City Lands to the Developer, and their remediation by the Developer, dated September 7, 2005.

**“Substantial Completion”** shall be as determined under the *Builders Lien Act* in relation to the completion of an improvement (as defined in such Act).

**“Sustainability Centre”** means a facility of not less than 2000 m<sup>2</sup> and not more than 4645 m<sup>2</sup>, that:

- (a) is a centre for learning, innovation, collaboration, action and environmental social non-profit organizations and other enterprises;
- (b) models and promotes the creative design of vibrant, healthy and green communities;
- (c) is operated under a cooperative or non-profit structure or organization; and
- (d) includes a minimum of 30 m<sup>2</sup> of area that is available for community use without charge.

**“Townhouse”** means, with respect to the LEED provisions under this Agreement, a stand-alone building of not more than four stories that is exclusively used for residential and accessory use, and to which the standard “ASHRAE/IESNA 90.1-1999: Energy Standard for Buildings Except Low-Rise Residential” does not apply (for greater certainty, a “Townhouse” as defined herein will contain more than one separate residential unit).

**“Transportation Demand Management Strategies”** means the strategies to be employed to reduce the number of vehicle trips in and out of the Development, and to reduce the demand for parking generated by the Development, as required by Part 7.0 of this Agreement.

**“Triple Bottom Line”** means the method of assessing the value of the Project from a social, economic and environmental perspective, as established and defined under the RFP.

**“Utilities”** means the Amenities that are on-site utilities and are to be constructed by or at the direction of the Developer in accordance with Part 12.0 of this Agreement.

1.2 The following Schedules are attached to and form part of this Agreement:

- (a) Schedule A – Rezoning Bylaw;
- (b) Schedule B – Design Guidelines;
- (c) Schedule C – Site Plan;
- (d) Schedule D – Development/Amenity Schedule;
- (e) Schedule E – Noise and Nuisance Mitigation Measures;
- (f) Schedule F – Transportation Demand Management Strategies;
- (g) Schedule G – Amenities;
- (h) Schedule H – Statutory Right of Way;
- (i) Schedule I – Licence Agreement;
- (j) Schedule J – Developer’s Annual Report Content;
- (k) Schedule K – Utilities;
- (l) Schedule L – Restrictive Covenant;
- (m) Schedule M – Parameters for Integrated Pest Management Plan;
- (n) Schedule N – City Audit Criteria; and
- (o) Schedule O – Adaptable Housing Policy .

1.3 The term “we” or “our”, as used in Schedules E, F, and G means the Developer.

1.4 The term “site”, as used in this Agreement, means the Dockside Lands, or a portion thereof, as the context requires.

- 1.5 A reference to a "Part" of this Agreement means the provisions of this Agreement that are contained under a separately numbered subject heading.
- 1.6 For certainty, any obligation of the Developer as set out in any Schedule to this Agreement is subject to any qualification or exception to that obligation that is contained in the terms of this Agreement.
- 1.7 In the event that the completion of the purchase and sale of the City Lands under the Sale Contract occurs after August 30, 2005, then all specific dates set out in this Agreement by which any action must be taken or completed (including all such specific dates as set out in the Schedules attached hereto and the calculation of the buildout years in Schedule D) shall be automatically extended by that number of days between August 30, 2005 and the actual date of the completion of the purchase and sale of the City Lands under the Sale Contract.

## **2.0 PURPOSE AND INTENT**

- 2.1 The purpose of this Agreement is to establish the terms and conditions under which the Developer will develop the Dockside Lands, after the Developer's acquisition of the City Lands under the Sale Contract.
- 2.2 The parties acknowledge and agree that the rights and obligations of the Developer and the City under this Agreement form one part of a larger agreement for the sale and remediation of the City Lands, and the subsequent development of the Dockside Lands.
- 2.3 The rights and obligations of the City and the Developer with respect to the sale and remediation of the City Lands are set out in Sale Contract, which has been executed prior to or contemporaneously with this Agreement.
- 2.4 Notwithstanding that the Sale Contract and this Agreement have been executed as separate instruments, the rights and obligations of the parties under both Agreements, and the consideration exchanged by them, are to be read as forming part of a single transaction.

## **3.0 CONDITION PRECEDENT**

- 3.1 It is a condition precedent to the obligations of the Developer under this Agreement that:
  - (a) title to the City Lands is transferred to the Developer under the Sale Contract; and
  - (b) Council adopts the Rezoning Bylaw and amends the City's Official Community Plan so as to incorporate the Design Guidelines and make them applicable to the Dockside Area.

#### **4.0 DEVELOPMENT COMMITMENTS**

- 4.1 The Developer covenants and agrees to develop the Dockside Lands in accordance with the requirements of the Rezoning Bylaw and the Design Guidelines.
- 4.2 Unless expressly provided in this Agreement, nothing in this Agreement shall relieve the Developer from any obligation or requirement arising under any applicable statute, bylaw or regulation in respect of the development of the Dockside Lands, and without limiting the generality of the foregoing:
- (a) the Developer shall remain fully responsible to ensure that the development of the Dockside Lands is in full compliance with all requirements of the bylaws of the City of Victoria respecting land development, zoning, subdivision and building construction; and
  - (b) the Developer shall pay all applicable permit fees and development cost charges in relation to the Development of the Dockside Lands, except as provided in subsection 14.9(b).
- 4.3 The Developer agrees to contribute Forty Thousand Dollars (\$40,000.00) annually to the City for a period of three (3) years commencing on the Sale Closing Date, towards the City's costs of hiring a Development Services Coordinator, for the purpose of administering this Agreement on behalf of the City. The Development Services Coordinator may be a City employee or contractor, and will act solely on behalf of, and under the direction of, the City. The Developer and the City will review on an annual basis the value of the services provided by the Development Services Coordinator and, at the end of that three year period, the Developer will have the option of terminating the arrangement set out in the preceding portion of this section 4.3 if, in the Developer's opinion, the Development Services Coordinator is not providing sufficient value and services to warrant such expenditure (provided that in that event the City shall not be held to be in breach of any of its commitments under section 23.11 of this Agreement if it is unable to meet such commitments because of the elimination or reduction in scope of the Development Services Coordinator position due to a lack of City resources). With the Developer's agreement, the contribution of the Developer under the first part of this section 4.3 may be extended beyond the three (3) year period contemplated herein.

#### **5.0 DEVELOPMENT PHASES, SUBDIVISION AND DEVELOPMENT PERMITS**

- 5.1 It is contemplated by the parties that the Developer may subdivide the Dockside Lands for the purposes of the Development in accordance with the site plan that is attached as Schedule C to this Agreement, and that further or additional subdivision applications may be submitted to the Approving Officer as the Development proceeds. The City acknowledges and agrees that the Developer

is not bound to subdivide the Dockside Lands as contemplated in Schedule C, and may propose alternative subdivision layouts as necessary to address changing demands for real estate products, subject always to the approvals required under section 5.2.

- 5.2 In connection with any application for subdivision of the Dockside Lands, the Developer must obtain a Development Permit from the Council, and the approval of the Approving Officer, and must comply with all applicable enactments and bylaws in connection with that subdivision.
- 5.3 The parties acknowledge that the Approving Officer is an independent statutory officer, and that nothing in this Agreement shall be interpreted as prejudicing or affecting the duties and powers of the Approving Officer in respect of any application to subdivide the Dockside Lands.
- 5.4 Prior to issuance of a Development Permit for any proposed development on the Dockside Lands, the Developer must submit an integrated pest management plan in relation to that part of the Development, for the approval of the Director of Parks, such plan to substantially conform to the requirements of Schedule M to this Agreement, which Schedule shall apply to the Dockside Lands, for the purposes of this Agreement, as if those lands were public lands. As an exception, in relation to the first Development Permit issued for the development of the Dockside Lands, the Developer must submit an integrated pest management plan for the approval of the Director of Parks, within two months after the date of the Development Permit approval and no building permit for the first phase construction will be issued until the integrated pest management plan has been received.

## **6.0 LAND USE - NOISE AND NUISANCE MITIGATION MEASURES**

- 6.1 The parties acknowledge that the Dockside Lands are in close proximity to lands that are zoned for industrial uses. In addition, it is contemplated that certain industrial uses will be permitted within the Dockside Lands. In order to mitigate the impact of noise and air pollution from those industrial uses on owners and occupiers of the Dockside Lands, the Developer shall develop the Dockside Lands in compliance with the requirements of Schedule E to this Agreement.
- 6.2 Without limiting section 6.1, and for greater certainty, the Developer shall ensure that the bylaws of any strata corporation established by the Developer comply with the requirements of section 2 of Schedule E.

## **7.0 TRANSPORTATION DEMAND MANAGEMENT STRATEGIES**

- 7.1 The parties acknowledge that the Rezoning Bylaw provides for off street parking requirements that are lower than the standard generally applicable under Schedule "C" of the City's Zoning Regulation Bylaw No. 80-159. In order to reduce the demand for parking generated by the Development, the Developer covenants and agrees to provide the following Transportation Demand

Management Strategies, in accordance with the guidelines and requirements stated in Schedule F to this Agreement, and in accordance with the Development Amenity Schedule set out in Schedule D to this Agreement:

- (a) mini-transit program;
- (b) car share co-op;
- (c) facilities for bicycle storage; and
- (d) those other items identified in Schedule F.

7.2 The Developer and the City will review the effectiveness of the Transportation Demand Management Strategies referred to in section 7.1 every second year, such review to be based upon the performance objectives relative to transportation demand management as set out in Schedule J and Schedule N. The City, acting reasonably, may require the Developer to amend or alter the Transportation Demand Management Strategies for subsequent Development Areas for which Development Permits have not been approved (by, for example, requiring the Developer to provide subsidized bus passes) in the event that the City determines that the performance objectives set out in Schedule J and Schedule N are not being met, provided that the Developer shall not be required to expend any funds in addition to the funds budgeted for the provision of the Transportation Demand Management Strategies referred to in section 7.1, as set out in Schedule D. The Developer's obligations and the City's rights under this section 7.2 will terminate on the date of Substantial Completion of all improvements in the Development.

7.3 The Developer's obligations under section 7.1 shall terminate as follows:

- (a) with respect to the mini-transit program as it applies to any Development Area, when the mini-transit bus has been purchased, the program implemented and the Developer has transferred its interest therein to a cooperative or non-profit organization;
- (b) with respect to the car share co-op as it applies to any Development Area, when the car share vehicles have been purchased, a car share program has been initiated and the Developer has transferred its interest therein to a cooperative or non-profit organization;
- (c) with respect to bicycle storage, with respect to each Development Area, when the Developer has provided the bicycle storage required pursuant to the Development Permit for that Development Area; and
- (d) with respect to all Transportation Demand Management Strategies, when the Developer has expended on the Transportation Demand Management Strategies those funds budgeted therefor in Schedule D.

## **8.0 PUBLIC REALM REQUIREMENTS**

### **(a) Public Amenity Construction**

- 8.1 The Developer covenants and agrees to construct and provide, at the Developer's sole cost, the Public Amenities described in Schedule G to this Agreement. For certainty, the Developer is responsible for any cost overruns in the event that the Developer's costs of constructing any Public Amenity exceeds the value for that Amenity as set out in Schedule D.
- 8.2 Each of the Public Amenities, when completed, must meet all general requirements as set out in Schedule G of this Agreement, to the satisfaction of the Director of Engineering, Director of Planning, and the Director of Parks, acting reasonably (subject to the right of the Developer to dispute pursuant to Part 19.0). Within 30 days of any request by the Developer that the City confirm that any Amenity has been completed in accordance with all general requirements as set out in Schedule G, the City shall provide the Developer with such confirmation in writing (or written reasons why the City is not prepared to provide such confirmation) and, within 5 days of such confirmation, the City shall release to the Developer or to the security provider, as relevant, any security or any relevant portion thereof it holds, the release of which is conditional upon the completion of such Amenity.
- 8.3 The Public Amenities must be constructed and installed by the Developer in accordance with the time frame established under the Development Amenity Schedule, Schedule D to this Agreement. For greater certainty, but subject to the exception provided in section 8.7, the Developer must complete the construction of each Public Amenity by the end of the last calendar year in which funds are projected to be spent for that Amenity, as set out in Schedule D.
- 8.4 Each of the Public Amenities shall be constructed on the Dockside Lands, except for the following (as more fully described in Schedule G):
- (a) Point Ellice Park improvements - to be constructed by the Developer on Point Ellice Park;
  - (b) small non-motorized boat launch and waterfront dock including Harbour Ferry Dock - to be constructed in the general area depicted on Schedule C of this Agreement, or such other location as is agreed to between the Developer and the City;
  - (c) concrete staircase from Johnson Street Bridge to Harbour Road; and
  - (d) upgrades to Galloping Goose Trail, on Park Lot 5 and along Harbour Road referred to in section 11 of Schedule G, except where such improvements are constructed by the Developer within the statutory right of way referred to in subsection 8.10(f).

- 8.5 Before commencing construction of any of the Public Amenities, the Developer must provide to the Director of Engineering and Director of Parks for their approval, acting reasonably, engineered drawings and construction details demonstrating that such Public Amenity, once constructed, will comply with the requirements of Schedule G to this Agreement.
- 8.6 In addition to the requirements of section 8.5, before commencing construction of the Greenway or the Galloping Goose Trail, the Developer must also provide to the Director of Engineering and Director of Parks for their approval, engineered drawings and construction details that demonstrate how the Greenway and the Galloping Goose Trail, as applicable, will be integrated with all other related structural elements on the Dockside Lands, and with all Development phases.
- 8.7 The Developer and the City, both acting reasonably, may agree to extend the time for completion of a Public Amenity, or a portion of a Public Amenity, where such extension is reasonably required to facilitate access to a portion of the Dockside Lands for development and construction purposes. Where the parties agree to such an extension, such Public Amenity, or portion thereof, must be completed by no later than the date of Substantial Completion of that portion of the Development within the Development Area where such Public Amenity is located.
- 8.8 Where because of construction access requirements, pedestrian access along the Greenway is disrupted or delayed, the Developer must provide temporary bypass connectors to the satisfaction of the Director of Engineering. Such bypass connectors must be at least 2 metres in width and must be constructed with a suitable surface, to the satisfaction of the Director of Engineering, acting reasonably.
- 8.9 In the event the Developer is in default of its obligation to complete construction of a Public Amenity by the date required under section 8.3 and Schedule D, or by the date required under section 8.7 if that section applies, the City may provide written notice to the Developer of such default. Without limiting any other remedy that may be available to it, in the event of such default by the Developer, and at the City's sole option, the City may require the Developer to pay to the City the monetary value of that Public Amenity as set out in Schedule D, less the amount which the Developer has expended in the construction of such Public Amenity, and in that case the said amount shall be a debt immediately due and owing by the Developer to the City. In that event, the City at its sole option may enter upon the Dockside Lands, or such other lands as the Public Amenity was to be constructed upon, to carry out or complete such construction, provided that at the Developer's request, the City will grant the Developer a further six (6) months from the applicable Amenity Completion Date in which to complete the construction of the relevant Public Amenity, but only if any applicable permits have been issued and any required approvals have been given for the construction of that Public Amenity, and construction is in progress at the time of such request. In the event the Developer is granted an extension of time under

this provision, the City will not invoke its right to complete the construction of the applicable Public Amenity during such extension period, but may do so following the expiry of the extension period if the Public Amenity is not yet completed.

**(b) Statutory Right of Way**

8.10 With respect to the following Amenities, the Developer covenants and agrees to grant to the City, at the Developer's sole cost, one or more statutory rights of way in the form attached as Schedule H to this Agreement, securing the public right of access to and use of:

- (a) the Greenway;
- (b) Vista Park pathway;
- (c) Triangle Park pathway;
- (d) Pedestrian access to connect the Galloping Goose Trail to Upper Harbour Place, as referred to in section 7 of Schedule G;
- (e) Public Washroom;
- (f) the Galloping Goose Trail (the parties agree to work together so that, as much as possible, the Galloping Goose Trail will be located in Park area and that it will be located on area DA-B, as shown on Schedule C, only to the extent that it is not physically practical to locate it on Park area);
- (g) existing sewer line where it may encroach on the eastern boundary of area DA-B (as shown on Schedule C); and
- (h) Main Plaza.

8.11 The statutory rights of way referred to in section 8.10 must be registered in the Land Title Office before the issuance of an Occupancy Permit for any building constructed on the relevant Development Area.

8.12 The Developer will be responsible for the cost of registering all statutory rights of way and of preparing and registering all right of way plans required for the purpose of section 8.10.

**(c) Harbour Access and Docks**

- 8.13 In the event that sediment testing and/or remediation of the bed of the harbour is required as a condition of the construction of the non-motorized boat launch and waterfront and ferry dock, as described in Schedule G:
- (a) the City and the Developer may agree:
    - (i) to the relocation or redesign of one or both of those Amenities, (provided that the relocated or redesigned Amenity must have a value equivalent to the value of the Amenity not provided as set out in Schedule D to this Agreement); or
    - (ii) to a combination of the relocation or redesign of one or both of the Amenities plus a financial contribution to the Amenity Fund (provided that the relocated or redesigned Amenity must have in combination with that financial contribution a value equivalent to the value of the Amenity not provided as set out in Schedule D to this Agreement);
  - (b) failing such agreement, the City will require the Developer to make a financial contribution to the Amenity Fund, in an amount equivalent to the value of the non-motorized boat launch and waterfront and ferry dock, as set out in Schedule D of this Agreement.
- 8.14 In the event the parties agree to the relocation of one or both of the non-motorized boat launch and waterfront and ferry dock to lands which are owned by Her Majesty the Queen in Right of Canada ("**Canada**"), the Developer must secure all necessary permits and approvals for the construction of those Amenities, including as required a lease or licence from Canada to permit construction and operation of such Amenities, subject to section 8.15. If a lease or licence from Canada is required, such lease or licence must be in the name of the City and must provide for a right of public access to and use of the Amenity.
- 8.15 In the event that the Developer, acting reasonably, cannot obtain from the provincial or federal levels of government such permits or approvals which may be required therefrom in connection with the construction of the non-motorized boat launch and waterfront and ferry dock, the Developer shall not be required to construct such Amenities. However, in any such event the Developer will be required to make the relevant contribution to the Amenity Fund referred to in subsection 8.13(b).
- 8.16 The City also agrees to provide owners and tenants of the Dockside Lands with public access to the Harbour.

**(d) Galloping Goose Trail**

8.17 The Developer covenants and agrees that the Point Ellice Park Improvements, as specified in Schedule G shall be constructed before any development occurs on Lot DA-B. In addition, during the construction of the Point Ellice Park Improvements, the Developer shall provide for the temporary diversion of the Galloping Goose Trail from Point Ellice Park onto Lot DA-B (the “**Temporary Trail**”). The Temporary Trail must be at least equivalent in width to the existing trail, with proper drainage, a firm sub-grade, and must be topped with six (6) inches of suitably sized and compactable road base with two (2) inches of pathway blend compacted with water, and must be constructed to the satisfaction of the Director of Engineering, acting reasonably. The location and grade of the Temporary Trail must be to the satisfaction of the Director of Engineering. The Developer shall grant the City a Licence of Occupation in the form attached as Schedule I to this Agreement, to secure public rights of access along the Temporary Trail, prior to the commencement of any park improvement work within Point Ellice Park.

**(e) Amenity Fund**

8.18 Any funds paid by the Developer to the City in lieu of the provision of a Public Amenity (where section 8.13 applies) or upon default of the Developer to complete construction of a Public Amenity (where the City has exercised its remedy under section 8.9) shall be held by the City in an Amenity Fund to be used for construction of the Public Amenity not provided by the Developer, or for the provision of an alternative Amenity that benefits the Dockside Lands, as agreed to by the City and the Developer, such construction by the City to be carried out in a reasonable time period. Payment of any such funds on account of any Public Amenity shall extinguish and terminate all of the Developer’s obligations with respect to the construction of that Public Amenity.

8.19 Further, and in addition to the funds referred to in section 8.18 above:

- (a) in the event that section 12.12 applies and if as a result the Developer does not construct the sewage treatment system referred to in section 12.1 the Developer shall pay into the Amenity Fund \$685,000 for the purposes contemplated in section 8.18; and
- (b) if section 12.12 does not apply and the Developer is in default of its obligation to construct the sewage treatment system, the City at its sole option, and without limitation to its other remedies, may require the Developer to pay the amount referred to in subsection 8.19(a) into the Amenity Fund for the purposes contemplated in section 8.18.

8.20 Further, and in addition to the funds referred to in section 8.18 above:

- (a) in the event that section 12.12 applies and if as a result the Developer does not construct the waste wood co-generation facility referred to in

section 12.1 the Developer shall pay into the Amenity Fund \$750,000 for the purposes contemplated in section 8.18; and

- (b) in the event that section 12.13 applies and the Developer is in default of its obligation to construct the waste wood co-generation facility, the City at its sole option, and without limitation to its other remedies, may require the Developer to pay the amount referred to in subsection 8.20(a) into the Amenity Fund for the purposes contemplated in section 8.18.

8.21 Further, and in addition to the funds referred to in section 8.18, in the event that the Developer is in default of its obligation to provide any or all of the Transportation Demand Management Strategies referred to in Part 7.0, the City, at its sole option, and without limitation to its other remedies, may require the Developer to pay into the Amenity Fund for the purposes contemplated in section 8.18 the funds referred to in Schedule D attributable to that Amenity and not expended by the Developer on that Amenity.

## **9.0 AFFORDABLE HOUSING**

### **9.1 General Principles**

- (a) Non-market and market affordable housing units will be integrated in the Development in a manner that best supports a strong, inclusive community.
- (b) The Developer and the City acknowledge and confirm their intention to work together so that up to 31% of the residential units on the City Lands are developed as Affordable Housing, whether as Non-Market Units or as Market Affordable Housing Units, and whether as a result of the Developer's contributions pursuant to sections 9.2 and 9.3 or as a result of additional funding obtained by the Developer or the City pursuant to sections 9.4 and 9.5.
- (c) Non-Market and market affordable housing units may consist of rental, rent to own, or owned units.
- (d) The Developer shall ensure that the initial strata bylaws for each strata corporation within the Development permit:
  - (i) the rental of any Non-Market Units located within that strata corporation; and
  - (ii) with respect to residential dwelling units located within that strata corporation that are not Non-Market Units or Market Affordable Housing Units, the rental of not less than twenty percent (20%) of such units.

- (e) The Developer and the City shall establish the Dockside Housing Advisory Committee (the “**Advisory Committee**”), comprised of one representative of the Developer, one representative of the City and a recognized independent affordable housing expert selected jointly by the Developer and the City. The Developer will provide the Advisory Committee with reasonable opportunities on an ongoing basis as construction of the Development proceeds to consult with the Developer, to provide the Developer with advice, and to reach consensus with the Developer in respect of the following matters, which matters shall constitute the terms of reference of the Advisory Committee (provided that if the Advisory Committee fails to provide its comments, input or direction (as applicable), or if consensus cannot be reached, within a reasonable commercial time frame, the Developer shall be entitled to act without the Advisory Committee’s input or consensus):
- (i) to consult with the Developer on the number and location of Non-Market Units to situate in any Development Area;
  - (ii) to consult with the Developer on the NPOs to whom the Developer should offer such Non-Market Units for sale;
  - (iii) to consult with the Community Liaison Group;
  - (iv) to direct the Developer to allocate to Market Affordable Housing Units any portion of the Affordable Housing Contribution that has not previously been allocated in accordance with the consultation process required under subsection 9.2(g);
  - (v) to choose a body to be responsible for administering the Market Affordable Housing program as contemplated in subsection 9.3(c); and
  - (vi) generally, to consult with the Developer concerning strategies for the effective implementation of the requirements of this Part of the Agreement.

## 9.2 Non-Market Units

- (a) In respect of each Development Area containing residential units, and following the consultation process referred to in subsection 9.1(e), the Developer shall determine which (if any) of the residential units in that Development Area the Developer shall offer for sale to one or more non-profit housing organizations (the “**NPOs**”) to be held by them for rental to low-income persons (each such unit being called a “**Non-Market Unit**”).
- (b) The Developer shall make available to the NPOs, as reductions to the purchase prices for Non-Market Units in the Development, a total amount for the whole of the Development equal to THREE MILLION DOLLARS

(\$3,000,000.00) (subject to adjustment as provided for in subsection 9.2(c)) (the “**Affordable Housing Contribution**”). In respect of each Development Area, the Developer shall be required to make available, as reductions to the purchase prices for the Non-Market Units in that Development Area, no more than that portion of the Affordable Housing Contribution which is equal to the product of the residential buildable square feet in that Development Area and \$3.00, as adjusted under subsection 9.2(c); however, the Developer may choose not to offer any Non-Market Units for sale in a particular Development Area. If any portion of the Affordable Housing Contribution which is available for any Development Area is not utilized in that Development Area (whether as a result of the Developer’s election under this subsection 9.2(b), or as a result of the inability or failure of one or more NPO’s to acquire the Non-Market Units in that Development Area), the unused portion shall be made available in respect of subsequent Development Areas, subject to subsection 9.2(d).

- (c) The balance of the Affordable Housing Contribution as it exists from time to time (not including any portion of the Affordable Housing Contribution which has previously been utilized by the NPOs) will be increased at the end of the twelve month period following the Sale Closing Date, and at the end of each twelve month period thereafter (each such date being an “**Adjustment Date**”), by the lesser of:
- (i) seven (7%) per cent, or
  - (ii) the percentage increase in construction costs in the Greater Victoria area for the twelve month period preceding the applicable Adjustment Date, as measured by a quantity surveyor selected jointly by the parties.

For greater certainty, on each Adjustment Date the \$3.00 figure referred to in subsection 9.2(b) will be increased, for the purpose of the various calculations referred to in this subsection 9.2(c), by the lesser of (i) and (ii) above.

Notwithstanding any other provision of this Agreement, the adjustment and increase referred to above will end (if it has not already done so) on Substantial Completion of all improvements in the Development.

- (d) At the option of the City, the Developer will pay to the City from time to time, to be held in trust by the City in an interest-bearing account with a Canadian bank, any portion of the Affordable Housing Contribution in respect of a Development Area which is not utilized in that Development Area (whether as a result of the Developer’s election not to make Non-Market Units available in that Development Area under subsection 9.2(b), or as a result of the inability or failure of one or more NPO’s to acquire

some or all of the available Non-Market Units in that Development Area). All interest earned by the City on such portion shall be added to the portion of the Affordable Housing Contribution held by the City, and shall be credited to the adjustment required to be made by the Developer under subsection 9.2(c). The terms of the trust under which the City holds those funds shall require the City to pay all or a portion of the funds so held by the City (together with any interest thereon) to an NPO for the purpose of acquiring one or more Non-Market Units in the Development, or to the Developer, or such other person as agreed to by the City and the Developer, in connection with the sale of any additional Market Affordable Housing Units pursuant to subsection 9.3(e) (as contemplated therein). If following the Substantial Completion of the Development any funds held by the City under this subsection 9.2(d) have not been utilized for the purposes contemplated in this Part, the balance of the funds shall be paid into the City's Affordable Housing Reserve Fund and utilized for the purposes authorized under that fund.

- (e) The Developer will make the Affordable Housing Contribution available on a residential Development Area by Development Area basis, as Development proceeds, when residential housing units within a Development Area are made available for sale or pre-sale. For each Development Area, the Developer will target making available a portion of the Affordable Housing Contribution that is at least equal to the product of the total square footage of the residential housing units that are available for sale or pre-sale in the Development Area multiplied by \$3.00, as adjusted under subsection 9.2(c). However, the Developer will be under no obligation to provide Non-Market Units in each Development Area or to provide Non-Market Units in accordance with any set time-frame. The Developer presently intends to provide the entire Affordable Housing Contribution, as adjusted under subsection 9.2(c), to NPOs within the first six (6) years after the Sale Closing Date.
- (f) Before the Developer begins marketing any residential units, and before entering into any agreement or arrangement that commits the Developer to any allocation of the Affordable Housing Contribution, the Developer will consult with the Advisory Committee as to the matters referred to in subsection 9.1(e) including the portion (if any) of the Affordable Housing Contribution which the Developer proposes to make available to NPOs in respect of the purchase of Non-Market Units in the relevant Development Area, and will advise the Advisory Committee as to:
  - (i) the number and type of residential housing units that the Developer proposes to sell as Non-Market Units in that Development Area; and
  - (ii) the market value of each such Non-Market Unit.

As a general principle, for the purposes of subsection 9.2(f)(ii) the market value of a Non-Market Unit shall be equal to the actual cost of the Unit (including land acquisition and hard and soft costs) plus 13% profit. Soft costs (as referred to in this subsection 9.2(f) and elsewhere in this Part) will consist of industry accepted standard soft costs such as consultant fees, interest, taxes, insurance, bonding, management and developer overhead. The City, at its discretion, will be entitled to review the Developer's records in connection with the actual cost of the Non-Market Units and the Developer's profit in relation to those units on a confidential basis.

The Advisory Committee will be entitled to direct the Developer from time to time to allocate to Market Affordable Housing Units any portion of the Affordable Housing Contribution that has not previously been allocated in accordance with the consultation process required under this subsection 9.2(f).

- (g) Following the consultation process required under subsection 9.2(f), and upon the Developer determining which residential units in a Development Area are to be offered for sale as Non-Market Units (if any), the Developer shall offer those Non-Market Units for sale to one or more NPOs. The Developer will transfer such Non-Market Unit to such NPO for a purchase price equal to the positive difference between the market value of such Non-Market Unit and the portion of the Affordable Housing Contribution which the Developer and the Advisory Committee (if consensus is achieved through the consultation required under this Part), or the Developer and the NPO (if consensus between the Developer and the Advisory Committee is not achieved), have determined should apply to its purchase of the Non-Market Unit.
- (h) The Developer will provide the first residential occupant of each Non-Market Unit in the Development, to a maximum of 75 units, with the following:
  - (i) a free initial car-share membership to a maximum value of \$500 per membership;
  - (ii) a bicycle at a maximum value of \$200; and
  - (iii) a bus pass subsidy of \$15 per month to the British Columbia Transit Authority for three years commencing on the date of closing the purchase of such Non-Market Unit.
- (i) The Developer shall have complied with all of its obligations under this section 9.2 when NPOs, in connection with their acquisition of Non-Market Units in the Development, have been provided with the benefit of the entire Affordable Housing Contribution, as adjusted under

subsection 9.2(c), but less any portion thereof which the Advisory Committee has directed the Developer to allocate to Market Affordable Housing Units, and when it has complied with subsection 9.2(h).

### 9.3 Market Affordable Housing Units

- (a) In addition to its commitment under section 9.2, the Developer will limit its profit earned on the sale of an additional Twenty Percent (20%) of residential housing units on the City Lands (the “**Market Affordable Housing Units**”) to 13% of the total project costs (land acquisition costs and hard and soft costs) attributable to those Units, and will ensure that this limitation on the Developer’s profit is reflected in the sale price of those Market Affordable Housing Units, in accordance with subsection 9.3(b). There will be no such limit on the Developer’s profit on any parking stalls sold in connection with any such Units.
- (b) The Developer agrees to market and sell the Market Affordable Housing Units at a price to be established as follows:
  - (i) the actual cost of the Unit (including land acquisition and hard and soft costs, as verified by a quantity surveyor) plus 13% profit.
- (c) The Advisory Committee will choose a body which shall be responsible for compiling a list of individuals to whom the Developer shall sell the Market Affordable Housing Units, it being the intention of the parties that such individuals shall be individuals to whom the definition of “Affordable Housing” would apply. The Developer must market and sell the Market Affordable Housing Units only to such individuals.
- (d) The Developer will ensure that all Market Affordable Housing Units fulfill the affordable housing requirements of this Agreement in perpetuity by registering a restrictive covenant against the title to each such Unit in favour of the body referred to in subsection 9.3(c), prior to its sale to the first purchaser, such covenant to be to the satisfaction of the City, and to provide that:
  - (i) the Unit is to be occupied by individual persons who are Victoria residents;
  - (ii) the Unit is not to be used for investment purposes;
  - (iii) in respect of any such Unit in any Development Area, future selling prices will be maintained at a percent of market prices equal to the product of (A) the sale price payable by the original purchaser of such Unit divided by the appraised value of such Unit at the time of such original sale and (B) 100;

- (iv) on each transfer of the Unit, the purchaser is to pay to the holder of the restrictive covenant a prescribed fee to assist the holder of the restrictive covenant in the administration and enforcement of all such restrictive covenants registered against Market Affordable Housing Units in the Development; and
  - (v) the holder of the restrictive covenant has the first right of refusal to purchase the Unit and resell it at the required below market price.
- (e) In the event that the Advisory Committee has directed the Developer to allocate a portion of the Affordable Housing Contribution to Market Affordable Housing Units, the Developer shall ensure that its profit on any relevant additional Market Affordable Housing Unit (in excess of the 20% of residential housing units contemplated in subsection 9.3(a)) is not greater than 13%. The Developer shall be credited, as against the required Affordable Housing Contribution under this Agreement, with an amount equal to the difference between the fair market value of such Unit and the actual sale price of such Unit and, if the City is holding funds representing any of the Developer's Affordable Housing Contribution pursuant to subsection 9.2(d), the Developer shall be entitled to be paid the amount referred to above out of such funds.
- (f) The Developer's obligations under this section 9.3 shall terminate when the Developer has transferred the number of Market Affordable Housing Units determined pursuant to subsection 9.3(a) to individuals identified pursuant to subsection 9.3(c) and has registered against each such Unit a restrictive covenant as contemplated in subsection 9.3(d). In connection with each transfer of a Market Affordable Housing Unit, the Developer shall provide the City with a summary setting out the Unit sold, the person to whom it was sold and the price at which it was sold and including a copy of the restrictive covenant (as contemplated in subsection 9.3(d)) registered against such Unit.

#### 9.4 Additional Funds

- (a) During the first six years after the Sale Closing Date, the Developer will make commercially reasonable efforts to obtain funding from other levels of government to enable NPOs to acquire Non-Market Units in the Development in excess of those contemplated in section 9.2 or enable a number of Market Affordable Housing Units in addition to those contemplated in section 9.3 to be transferred by the Developer. The City will support such efforts, as the City deems appropriate. Any additional funding obtained through such efforts will be paid to and held by the City in trust for the purposes of assisting in the transfer of additional Non-Market Units or Market Affordable Housing Units in the Development.

- (b) The City agrees to direct to the fund contemplated in subsection 9.4(a) an amount equal to Twenty Percent (20%) of all building permit fees payable with respect to the Development to assist in the purchase of Non-Market Units and Market Affordable Housing Units in the Development.

#### 9.5 Additional Strategies to be explored after MDA is signed

- (a) The Developer will explore the viability and potential of additional strategies to enhance Affordable Housing on the Dockside Lands including:
  - (i) reduction of the cost of construction through material selection, massing, level of finishing, the “grow homes” concept, and single use wood frame housing buildings;
  - (ii) providing innovative financing programs for home ownership and supporting cost measures that in the long run will create operating cost savings or home-owners;
  - (iii) the provision of “location efficient mortgages” – through Vancouver City Savings Credit Union, under which mortgages are provided at favourable rates and terms for all home buyers within the Dockside Lands.
- (b) The City and the Developer will explore the viability and potential of additional strategies to enhance Affordable Housing on the Dockside Lands as follows:
  - (i) contributing an amount equal to all or a portion of the municipal component of property taxes payable with respect to the Dockside Lands to the fund contemplated in subsection 9.4(a) for the purpose of acquiring additional Non-Market Units or Market Affordable Housing Units, or, as permitted under the provisions of the *Community Charter*, providing an exemption for such taxes so that the Developer can direct the exempted amount to such fund;
  - (ii) contributing to such fund an amount equal to the total amount of building permit fees payable for the Non-Market Units to enable the acquisition of additional Non-Market Units; and
  - (iii) waiving LEED platinum certification requirements on buildings designated exclusively for Affordable Housing.

#### 9.6 Verification of Costs

Where this Part of the Agreement requires the Developer to limit its profit on the sale of a residential housing unit to a certain percentage of its costs, or otherwise requires consideration and calculation of development costs or any monetary

savings in relation to such costs, such costs or savings will be subject to review and verification by a qualified individual mutually selected by the City and the Developer, if the City so requests, on the basis that the Developer's information will be kept confidential and that, although the qualified individual will provide the City with his or her conclusions, he or she will not provide the City with copies of the material he or she has reviewed.

## **10.0 DEVELOPER'S ANNUAL REPORT AND OTHER INITIATIVES**

- 10.1 The Developer agrees to provide the City with an annual report, until the date of Substantial Completion of all improvements in the Development, as to the matters and in the form referred to in Schedule J of this Agreement. For greater certainty, Schedule J is attached for the purpose of setting out the matters to be included in and the form of the annual report and in no event will Schedule J be read and construed as binding the Developer to any obligations which are not set out in the main body of this Agreement or any Schedule to this Agreement (other than Schedule J) or the Sale Contract.
- 10.2 The Developer agrees that all housing constructed by the Developer as part of the Development shall comply with the Adaptable Housing Guidelines.
- 10.3 Subject to terms and conditions that are mutually agreeable to both parties, the Developer will build and then lease to the City, at market rates, a fire hall to be located on the Dockside Lands. The City must provide notice to the Developer by the end of Year Two (2) (as defined in Schedule D) of the City's intention to pursue this initiative, and the terms and conditions for the construction and lease of the fire hall must thereafter be concluded by the end of Year Three (3) (as defined in Schedule D). In the event notice is not given by the City, or negotiations are not completed, within the timeframe contemplated herein, the Developer shall be under no further obligation to construct a fire hall on the Dockside Lands.
- 10.4 Until Substantial Completion of all improvements in the Development, the City will prepare an annual audit based upon the Developer's annual report (as provided under section 10.1), as well as additional performance measures to be developed by the City. The terms of reference for such Audit are as set out in Schedule N, which is attached for informational purposes only and may be amended or replaced at any time by the City.

## **11.0 LEED COMMITMENTS**

- 11.1 Except where expressly provided otherwise, the Developer will construct all buildings on the Dockside Lands:
- (a) With respect to all buildings on the City Lands, to the LEED Canada-NC version 1.0 Platinum standard, provided the applicable government or other regulator permits the Developer to install and operate the Utilities as contemplated under Part 12.0 of this Agreement;

- (b) With respect to all buildings on the City Lands, in the event the Developer is not permitted by the applicable government or other regulator to install and operate the Utilities as contemplated under Part 12.0 of this Agreement, the Developer's obligations will revert to constructing such buildings to the LEED Canada-NC version 1.0 Gold standard; and
  - (c) With respect to all buildings on the Princess Mary Lands, to the LEED Canada-NC version 1.0 Silver Standard.
- 11.2 If subsequent to the date of this Agreement an Applicable LEED Standard is amended or replaced by a LEED Standard that imposes performance criteria that are at least equivalent to, or are more stringent than, the Applicable LEED Standard, then subject to the approval of the City, the Developer may substitute that revised or replacement LEED standard for the Applicable LEED Standard, and that revised or replacement standard shall from the date of the City's approval be substituted for all purposes as the Applicable LEED Standard.
- 11.3 In the event that the United States Green Building Council or the Canada Green Building Council releases a LEED for Neighbourhood ("**LEEDND**") rating system with performance standards that are at least equivalent to, or more stringent than, the Applicable LEED Standard, then with the approval of the City, the Developer may substitute the LEEDND for the Applicable LEED Standard, and from the date of the City's approval the LEEDND shall for all purposes be substituted as the Applicable LEED Standard.
- 11.4 The Developer must pay to the City a penalty of ONE (\$1.00) DOLLAR per buildable square foot for all buildings constructed on the Dockside Lands that are required to achieve but fail to achieve the Applicable LEED Standard.
- 11.5 In the event the Developer sells a controlling interest in all or a portion of the Dockside Lands (which shall not include sales of individual strata lots, other than individual bare land strata lots), and should the purchaser or any successor in title fail to achieve the Applicable LEED Standard, that purchaser or successor in title will be liable for the payment of a penalty of TWO (\$2.00) DOLLARS per buildable square foot for all buildings that are required to achieve but fail to achieve the Applicable LEED Standard and the Developer shall be released from its obligation under section 11.4 insofar as it relates to the land owned by such purchaser or successor in title. The obligation of such purchaser or successor in title shall be secured under the provisions of a restrictive covenant in favour of the City to be registered against the transferred portion of the Dockside Lands prior to the transfer thereof by the Developer.
- 11.6 The process under which the Developer or any subsequent owner shall establish their compliance with this Part of the Agreement shall be as follows:
- (a) (within ninety (90) days (except for the buildings constructed in the first Development Area on the Dockside Lands, for which the applicable period

will be three hundred and sixty-five (365) days) of the City issuing an occupancy permit for a building, the Developer, or any applicable successor under this Agreement, shall provide to the City a certificate issued by the Canada Green Buildings Council, or its successor, certifying that the building has met the Applicable LEED Standard;

- (b) in the event the Developer, or any applicable successor under this Agreement, does not produce the Applicable LEED Standard certificate within the time required, the Developer or the purchaser or successor in title, as applicable, shall pay to the City the penalty as outlined in section 11.4 or 11.5 above;
- (c) the City shall hold the penalty in trust for one (1) year from the date the Applicable LEED standard certificate was due in order to permit the Developer, or any applicable successor, to provide further evidence or assurances to Canada Green Buildings Council, or its successor, in order to achieve certification of the Applicable LEED Standard;
- (d) in the event the Developer, or any applicable successor, produces the Applicable LEED Standard certificate issued by Canada Green Buildings Council, or its successor within the one (1) year period contemplated under subsection 11.6(c), the City shall forthwith refund the penalty to the Developer, or its applicable successor;
- (e) in the event the Developer, or any applicable successor, does not produce the Applicable LEED Standard certificate for the building within the one year period provided for under subsection 11.6(c), the penalty shall be forfeited to the City and shall be credited to the Community Amenity Fund;
- (f) in the event the LEED rating system or the governing body administering the LEED rating system ceases to exist, both parties shall agree on the appointment of a subject matter expert to determine if the Applicable LEED Standard has been met for any building which has been completed, and for which a LEED standard certificate is unavailable. The Developer, or any applicable successor, shall be responsible for the costs of the subject matter expert's review, provided that such costs shall not exceed the LEED certification costs applicable at the time of the dissolution of the LEED rating system or the LEED governing body in Canada.

11.7 The requirements for LEED certification shall not apply to:

- (a) that portion of a building containing a restaurant and/or bar permitted under a Development Permit;
- (b) Townhouses; or
- (c) those buildings or portions thereof for which a LEED certification process does not exist as of the date of this Agreement.

- 11.8 The Developer will ensure that any future owners who purchase any portion of the Dockside Lands from the Developer, and/or property managers retained by the Developer of the Dockside Lands, understand and support the practices and techniques necessary to support the LEED certification level and general degree of sustainability attained by the Developer, including without limitation, management of the park space, stormwater management system, accessibility, mobility, transit/transportation and public education. The Developer shall satisfy its obligations under this provision by providing a comprehensive document to all future owners outlining the features of the Development that were relevant to the LEED certification, the purpose of those features, and the measures that are necessary to maintain such features to ensure that the intent and purpose of the Applicable LEED standard is met.
- 11.9 Prior to the transfer by the Developer to any purchaser of any portion of the Dockside Lands, the Developer shall ensure that the purchaser is provided with all information which the purchaser would reasonably require to support the practices and techniques necessary to support the LEED certification level. With respect to any purchaser of a strata lot, the Developer shall have complied with the following obligation if the Developer provides such information to the relevant strata corporation (rather than to each purchaser of a strata lot).

## 12.0 ON-SITE UTILITIES

- 12.1 Subject to section 12.12 and 12.13, the Developer will construct and provide the following Amenities (collectively the “**Utilities**”) for the Development, in accordance with the general principles described in Schedule K, and in accordance with the time frame established under Schedule D of this Agreement:
- (a) on-site sewage treatment systems; and
  - (b) on-site waste wood co-generation facility.
- 12.2 The waste wood co-generation facility may be located on lands other than the Dockside Lands, provided that the City and the Developer agree to such off-site location. Further, the City agrees that if requested by the Developer, it will provide a location for the waste wood co-generation facility on City-owned land, provided that:
- (a) the terms under which any City-owned land is made available to the Developer must be to the satisfaction of the City;
  - (b) the Developer must pay market value for any disposition of City-owned land for this purpose;
  - (c) any disposition of City-owned land for the purpose contemplated in this section 12.2 is subject to all requirements of the *Community Charter*; and
  - (d) such land has been zoned to permit such use.

- 12.3 Each of the Utilities will be designed and constructed in accordance with sound engineering principles, and must meet all applicable regulatory requirements.
- 12.4 The City assumes no responsibility to review or approve the Utilities and assumes no responsibility to ensure that the Utilities will function in accordance with the requirements of this Agreement.
- 12.5 While the Developer shall make every effort to ensure that the on-site sewage treatment and on-site waste wood co-generation facilities (including through the provision of on-site back-up systems) meet 100% of the sewage treatment and heating requirements of the Development, backup systems that require connection to off-site utilities may be provided as follows:
- (a) with the approval of the Director of Engineering, acting reasonably, the Developer may provide a connection from the on-site sewage treatment system to the City's sanitary sewer system for use in the event of an Extreme Emergency and as provided in subsection 12.6(c).

Where the Developer provides electrical power itself directly to the Development, the Developer will be required to provide an off-site back-up system for electrical power requirement, which system must be approved by British Columbia Hydro and Power Authority.

- 12.6 The on-site sewage treatment systems and on-site waste wood co-generation facility will be installed incrementally in accordance with the following provisions:
- (a) the portions of those Utilities necessary to service that part of the Development authorized under the first Development Permit issued for the Dockside Lands shall be constructed and commissioned by the end of Year 2, as described in Schedule D of this Agreement;
- (b) the balance of those Utilities may be constructed incrementally, as required to service subsequent phases of the Development;
- (c) until the first phase of the on-site sewage treatment system, as contemplated under subsection 12.6(a), has been constructed and commissioned, the Developer will be permitted to connect the first Development Phase to the City's sanitary sewer system through a temporary connection at the Developer's cost, provided that:
- (i) a flow meter will be installed at such temporary connection, and the City's standard sewage connection and disposal rates will apply for so long as that temporary connection is in use; and
- (ii) following the start-up of the on-site sewage treatment system (as contemplated under subsection 12.6(a)), the temporary connection will be closed, and thereafter will only be available for use during an event of Extreme Emergency.

- 12.7 The City will allow sewage that is collected in the City's sanitary sewer system from other sources to be treated in the on-site sewage treatment systems during the start-up phase of such systems, to the extent required to provide effective start-up conditions, provided that:
- (a) the Developer must submit to the Director of Engineering, in advance, for the Director's approval, a detailed proposal for such treatment, demonstrating compliance with all applicable regulatory requirements;
  - (b) the Developer shall be responsible for all capital and operating costs incurred or necessary for the conveyance of sewage from the City sewer mains to the on-site sewage treatment systems; and
  - (c) such use must have no detrimental impact on the City's sanitary sewer system, and the Director of Engineering will have the sole and final discretion to determine whether any detrimental effects may result.
- 12.8 Subject to subsection 12.2(a), the Developer will use all reasonable efforts to obtain any necessary regulatory approvals for the on-site sewage treatment and waste wood co-generation facilities that service a Development Phase prior to Substantial Completion of that Development Phase. In the event that such approvals are not obtained within that time, the Developer and the City may agree to the temporary treatment and disposal of sewage from that Development Phase on the same terms and conditions as set out in subsection 12.6(c) and the City will not withhold the issuance of an occupancy permit for any building in such Development Phase solely for the reason that the Developer has not obtained such approvals, provided that:
- (a) appropriate back-up systems are in place; and
  - (b) the Developer continues to use its best efforts to obtain any necessary regulatory approvals.
- 12.9 The City acknowledges its intent, where legally and practically possible, to purchase from the Developer or operator of the relevant Utility surplus electricity and heat produced by such Utility for use in or on nearby City lands, provided that:
- (a) the rates paid by the City are not to exceed market rates;
  - (b) there shall be no additional costs to the City for the provision of the surplus electricity or heat;
  - (c) back-up systems for the Utilities shall be provided by the Developer or operator in accordance with section 12.5;
  - (d) the City will not be bound to purchase any surplus electricity or heat until an agreement for that purpose is negotiated and executed.

- 12.10 The City will support the Developer in its discussions with the Capital Regional District or any other regulatory bodies in the pursuit of any grants available for the installation or operation of the Utilities. Any grants received as a result of direct submission by the Developer and the City will be jointly shared with the Developer and the City.
- 12.11 The City will consider any proposal from the Developer for the extraction of heat from the City's main sewage trunk lines and water lines, provided that the City is not bound to any such proposal until an agreement is negotiated and executed.
- 12.12 The City acknowledges that the Developer's commitment to construct the wood-waste wood co-generation facility and on-site sewage treatment system is conditional upon any necessary regulatory approvals being obtained by June 30, 2008 and that should a regulatory authority (if required by law to do so) not approve one or both of such Utilities, the Developer will be released from its obligations to provide that Utility under this Master Development Agreement (but not from its obligation to pay those related amounts referred to in section 8.19 and 8.20). The City shall have the right to review why the Developer was unable to obtain any necessary regulatory approvals.
- 12.13 In the event that the wood waste co-generation facility is not provided by June 30, 2008, the Developer will be responsible for paying the related amount referred to in section 8.20, and will not, for certainty, be released from its obligation to construct all buildings on the City Lands to the LEED Standard required under subsection 11.1(a), except as a result of the inability to obtain regulatory approval as contemplated in subsection 11.1(b).
- 12.14 The Developer's obligations under this Part 12.0 will be deemed to be satisfied upon the Developer obtaining any regulatory approvals required in connection with the Utilities and upon the construction of the Utilities in accordance with section 12.3 (subject to section 12.12).

### **13.0 OPERATION AND MAINTENANCE OF AMENITIES AND UTILITIES**

- 13.1 Prior to the issuance of an occupancy permit for any building constructed on the Dockside Lands, the Developer shall have put in place a regime or regimes by which the Amenities and the Utilities (subject to section 12.12) will be maintained and operated on the Dockside Lands (or in the case of the wood waste co-generation facility, at such alternative location as may be agreed to under section 12.2) (such regimes may include appropriate obligations under strata bylaws, a building scheme and section 219 covenants and section 218 statutory rights of way in favour of one or more entities) and shall have submitted for the City's review the legal instruments and arrangements related thereto.

## 14.0 OFF-SITE SERVICES AND STATUTORY RIGHT OF WAY

### (a) Off-Site Services

14.1 The City will construct, at its expense, and maintain except where noted otherwise in this provision:

- (a) along the frontage of the City Lands, completion of the construction of Harbour Road, including sanitary sewer main, storm main, water main, utility ducting (not maintained by the City), gas main (not maintained by the City), curb bulbs (landscaping adjacent to each Development Area to be maintained by the Developer until Substantial Completion of the improvements in that Development Area; the Developer will provide, in the bylaws of each strata corporation, that such strata corporation shall be responsible for such maintenance), gutter, sidewalk, grassed boulevard, paving, signage, paint markings and street lighting in accordance with standard City of Victoria engineering design and materials requirements;
- (b) paving of Harbour and Tyee Road along the frontages of the Dockside Lands;
- (c) completion of the sidewalk along Tyee Road;
- (d) construction of curb bulbs on Tyee Road for pockets of landscaped boulevard (concrete work only, landscape work to be the responsibility of the Developer);
- (e) up to four sanitary sewer service connections to the Dockside Lands;
- (f) up to four storm water service connections to the Dockside Lands;
- (g) four domestic water connections to the Dockside Lands;
- (h) four sets of empty utility ducts; and
- (i) placement of one fire hydrant.

The Developer shall be required at its cost to provide the working drawings for the works to be constructed by the City and by the Developer on Tyee and Harbour Roads, as set out above in this Part 14.0.

If any curb bulb (as referred to in subsection 14.1(a)) is not being properly maintained by the Developer or any successor owner of the relevant adjacent property, the City shall be entitled to remove all existing landscaping on such curb bulb and replace it with such items as the City desires.

- 14.2 The City and the Developer will work together to coordinate and harmonize their respective work on the capital improvements to Tyee and Harbour Roads, in so far as that is practical.
- 14.3 The City reserves the right to approve the location of all service connections referred to in section 14.1.
- 14.4 The City will construct or arrange for the works and services referred to in section 14.1 in a timely manner having regard to the anticipated timing of the Development as set out in Schedule D.
- 14.5 The Developer shall be responsible for the installation of any off-site landscaping required under the Design Guidelines, or Schedule G to this Agreement, except where such landscaping is expressly stated to be the responsibility of the City under section 14.1 of this Agreement.
- 14.6 The Developer shall be solely responsible for the cost of any additional service connections required for the development of the Dockside Lands, including without limitation any fire service connections, and for any other off-site works and services required under the terms of this Agreement (except as otherwise expressly stated in this Agreement). Without limitation, the Developer shall be solely responsible for all frontage improvements adjacent to the Princess Mary Lands, as required under the City's development and subdivision bylaws.
- 14.7 The City may elect to pay the Developer to carry out construction of the works the City is responsible for under section 14.1, at a cost not to exceed the City's anticipated cost of providing such works (subject to the Developer's approval of those costs), in order to avoid site congestion and scheduling problems between the City and Developer.

**(b) Statutory Rights of Way and Easements**

- 14.8 The Developer agrees to grant to the City the following statutory rights of way over the Dockside Lands, in a form acceptable to the Director of Engineering:
- (a) a statutory right of way for the existing sewer drain and lift station (if such statutory right of way is not registered prior to the Sale Closing Date). In addition, the Developer will grant to the City a statutory right of way for a new sewage lift station and appurtenances, at a location to be mutually agreed by December 31, 2005. Both such statutory rights of way will be provided at the Developer's sole cost. In the event that the new sewage lift station and appurtenances are constructed, then the right of way for the existing sewer drain and lift station will be modified or discharged to the extent reasonably possible;
- (b) a statutory right of way for widening Harbour Road and related improvements, at a location to be mutually agreed by February 26, 2006; and

- (c) a statutory right of way to reflect the current location of the existing sewer main along the eastern boundary of area DA-B (as shown on Schedule C), such statutory right of way area to extend no more than one and one-half metres on each side of the centre of the existing pipeline.

In addition, the Developer agrees to dedicate to the City, at the time of the first subdivision of the Dockside Lands, that strip of land along the front of the Princess Mary Lands having an area of approximately 358.2 square metres as shown on the site plan attached as Schedule C.

14.9 In exchange for the grant of the statutory rights of way referred to in section 14.8, the City agrees:

- (a) subject to the provisions of the City's bylaws, to permit the Developer to connect its storm drainage system to the City's storm drains as located at the north and south ends of the Development, and if such connection is not possible due to storm water quality or quantity issues, to grant an easement through City owned land for storm drainage purposes for the discharge of storm water directly into the harbour; and
- (b) to grant to the Developer and/or the operator of the relevant Utilities for the Development a permit to locate a sewage trunk line and hot water line and any other utilities required in connection with the Development under the sidewalk along Harbour Road and across Harbour Road to connect to areas DA-A and DA-C to area DA-B (as such areas are shown on Schedule C) on the following basis:
  - (i) the Developer and/or operator will be required to submit a relevant permit application to the City;
  - (ii) the City will apply its standard one time only application or permit fee in connection therewith;
  - (iii) the application will be subject to the review and approval of the Director of Engineering, acting reasonably (as to the location and design detail of the utilities, with the intent of minimizing the permit area, and as to how the permit area is to be used, but not as to the right of the Developer and/or operator to use the permit area for the purposes contemplated in this subsection 14.9(b));
  - (iv) the permit will be for the life of the Development or until such time that is relevant;
  - (v) the permit will contain the City's standard permit requirements for any utility located under City roads (excepting the standard annual rental fee), including:

- A. the obligation of the permit holder to indemnify the City for any costs incurred by the City as a result of the presence of such utilities under the City road;
- B. the obligation of the permit holder to relocate or replace, at its cost, any existing items which must be moved or removed in connection with the permit holder installing or repairing or replacing from time to time its utility works;
- C. the obligation of the permit holder to bear all costs of any future relocation of its utility works, including where such relocation is deemed necessary by the City (acting reasonably); and
- D. that the City must not be held liable for damages including economic loss, or any costs or expenses resulting from the damage to or disruption of the utility works, by any means whatsoever including acts or omissions of the City and its employees, contractors and agents.

14.10 The City acknowledges that certain statutory rights of way (including those referred to in item 21 of Schedule A to the Sale Contract) are currently registered against the Dockside Lands in respect of the City's sewer works and that the current location of such sewer works may interfere with the Developer's development of the Dockside Lands. The City agrees that the Developer, at its sole cost, shall be entitled to relocate any or all of such sewer lines (under the approval of the Director of Engineering, acting reasonably) and, in connection with any such relocation, the City will promptly discharge any related statutory right of way, provided that the Developer executes and registers a replacement statutory right of way in respect of the area to which the sewer lines have been relocated.

14.11 The Developer shall be responsible for the costs of preparing and registering the statutory rights of way and easements referred to in sections 14.8, 14.9 and 14.10, as well as any survey plans required.

## **15.0 TRAFFIC ISSUES**

15.1 The City shall install, at its cost, the following, to be completed no later than the date an Occupancy Permit is issued for the first building constructed on DA-A:

- (a) a traffic signal to City Engineering standards on the Dockside Lands at the intersection of Tyee Road and Harbour Road;
- (b) a median, including landscaping (but not including trees), on Tyee Road between Wilson Street and Harbour Road; and

- (c) a marked pedestrian crosswalk on the north side of the Tyee Road and Wilson Street intersection,

all as generally depicted on Schedule C of this Agreement.

- 15.2 The works provided under section 15.1 shall be in accordance with standard City of Victoria engineering design and materials requirements.

## **16.0 COMMUNICATION WITH THE PUBLIC AND COUNCIL**

- 16.1 The Developer will provide signage throughout construction of the Development to apprise the public of all development activities on site.
- 16.2 In consultation with the City, the Developer will provide some form of appropriate recognition for the City's contribution to the creation of the Sustainability Centre.
- 16.3 The Developer will work with the community to establish a community liaison group (the "**Community Liaison Group**"), to be based in the Sustainability Centre. The Community Liaison Group will function as a forum for the development and solicitation of innovative ideas in response to issues affecting the Dockside Lands, and the surrounding community, such as traffic demand management and affordable housing.
- 16.4 The Developer's obligations in this Part 16.0 shall terminate on the Substantial Completion of the improvements in the Development.

## **17.0 RESTRICTIVE COVENANT**

- 17.1 Prior to the transfer of the City Lands to the Developer, the Developer shall execute and deliver a restrictive covenant to be registered against title to the Dockside Lands, pursuant to section 219 of the *Land Title Act*, which incorporates certain of the terms of this Master Development Agreement and is in the form attached as Schedule L to this Agreement.
- 17.2 The Developer shall also execute and deliver, within the time required under section 17.1, or such other time as the City may agree to, a restrictive covenant or covenants pursuant to section 219 of the *Land Title Act*, to be registered against title to the Dockside Lands or a portion thereof, that shall include the following provisions:
- (a) that the Sustainability Centre shall not be used for a purpose other than the purposes contemplated under this Agreement;
  - (b) that Amenities on the Dockside Lands or any relevant portion thereof will be properly maintained (and if such Amenity has not been completed at the time of registration, such covenant may at the City's option include a statutory right of way pursuant to section 218 of the *Land Title Act*

permitting the City to enter upon the relevant portion of the Dockside Lands for the purpose set out in section 8.9 of this Agreement); and

- (c) that buildings may be constructed along Harbour Road in accordance with the Rezoning Bylaw and the Design Guidelines, provided that such buildings cannot be higher than as permitted in the Rezoning Bylaw or as contemplated under the Design Guidelines (the restrictive covenant referred to in this subsection will be discharged by the City upon the Substantial Completion of all improvements in the Development).

Upon any subdivision of the Dockside Lands, the restrictive covenant or covenants shall be read and construed as a number of restrictive covenants, such that the owner of any Lot created by such subdivision is liable for a breach of the relevant restrictive covenant only to the extent that it relates to the Lot owned by such owner.

## 18.0 ASSIGNMENT

- 18.1 The Developer may not sell or assign its controlling interests in this Agreement, in whole or in part to any other person (including a corporation or partnership formed for such purpose) without the prior written approval from the City, such approval in the City's sole discretion. Notwithstanding the foregoing, the Developer will be entitled to assign its interest in this Agreement to an affiliate (as that term is defined in the *Business Corporations Act* of British Columbia) of the Developer or to a limited partnership of which the Developer is the general partner without the approval of the City, provided that such assignee has first assumed the obligations of the Developer under this Agreement by an agreement in writing in favour of the City. Notwithstanding any sale of the Dockside Lands or assignment of this Agreement, the Developer will not be released from the obligations under this Agreement until such time as any successor to the Developer or permitted assignee is so released. For the purpose of this section, any change of control of the Developer shall constitute an assignment by the Developer of its interest in this Agreement requiring the prior written approval of the City, provided that either Vancity Enterprises Ltd. or Windmill Development Group Ltd. will be entitled to transfer all of its shares in the Developer to the other without requiring the consent of the City thereto. For the purposes of this section, control of a corporation will be determined in accordance with section 2(3) of the *Business Corporations Act*.

The foregoing shall not be construed or utilized to prohibit the Developer from granting any security to any lender charging the Dockside Lands (which the Developer shall be entitled to do without the consent of the City) or to impede any such lender from assuming control of all or a portion of the Dockside Lands to protect such lender's position, provided that the obligations of the Developer under this Agreement, as secured by the covenant referred to in section 17.1, shall be registered in priority to any such financial charge.

## 19.0 DISPUTE RESOLUTION

- 19.1 If a dispute arises between the parties in connection with this Agreement, the parties agree to use the following procedure as a condition precedent to any party pursuing other available remedies:
- (a) either party may notify the other by written notice (“**Notice of Dispute**”) of the existence of a dispute and a desire to resolve the dispute by mediation;
  - (b) a meeting will be held promptly between the parties, attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute;
  - (c) if, within forty-eight (48) hours after such meeting or such further period as is agreeable to the parties (the “**Negotiation Period**”), the parties have not succeeded in negotiating a resolution of the dispute, they agree to submit the dispute to mediation and to bear equally the costs of mediation;
  - (d) the parties will jointly appoint a mutually acceptable mediator (who must be an expert in the subject matter of the dispute), within forty-eight (48) hours of the conclusion of the Negotiation Period;
  - (e) the parties agree to participate in good faith in the mediation and negotiations related thereto for a period of thirty (30) days following appointment of the mediator or for such longer period as the parties may agree. If the parties are not successful in resolving the dispute through mediation or if the mediation has not commenced within fourteen (14) days following the appointment of the mediator or if the parties cannot agree upon the mediator appointment, then the parties agree that the dispute will be settled by a single arbitrator in accordance with the *Commercial Arbitration Act* (British Columbia), as amended. The decision of the arbitrator will be final and binding and will not be subject to appeal on a question of fact, law, or mixed fact and law; and
  - (f) the costs of mediation or arbitration will be awarded by the mediator or arbitrator in his or her absolute discretion.
- 19.2 In no event shall the foregoing be construed as impeding or affecting the City’s authority to enforce its zoning and other regulatory bylaws.

## 20.0 FORCE MAJEURE

- 20.1 Neither party will be liable for delay in performing or failure to perform obligations under this Agreement if the delay or failure is directly or indirectly caused by or is a result of any circumstance beyond its reasonable commercial control. Such delay or failure will not constitute a breach of this Agreement and the time for performance will be extended by a period equivalent to that during which the

performance is prevented. No lack of money, financing, or credit will excuse performance. Without limiting the first sentence of this section, the following will be circumstances outside a party's reasonable commercial control:

- (a) Acts of God, explosion, flood, lightning, tempest, weather conditions, fire or accident;
- (b) War, hostilities, invasion, or act of foreign enemies;
- (c) Rebellion, revolution, insurrection, military or usurped power, or civil war;
- (d) Riot, civil commotion, or disorder;
- (e) Acts, restrictions, regulations, by-laws, prohibitions, refusals to grant or delay in granting licenses, permits, or permissions or measures of any kind, on the part of any governmental authority, including the City, provided that this shall not apply where the Developer has failed to comply with any/all applicable requirement in seeking such licenses, permits or permissions;
- (f) Import or export regulations or embargoes;
- (g) Strikes, lock-outs, or other industrial actions or trade disputes of whatever nature (whether involving employees of a party to this agreement or a third party) or the unavailability of trades required to pursue development in a timely manner;
- (h) Defaults of suppliers or sub-contractors for any reason whatsoever;
- (i) Incompleteness or inaccuracy of any information which it is the responsibility of the other party to provide;
- (j) Any failure, default, delay in performance, or act or omission of any nature whatsoever on the part of the other party, or its employees, agents, suppliers, or sub-contractors; or
- (k) Failure by the City or the Approving Officer to grant any such subdivision approvals or rezoning as may be necessary in order for the Developer to proceed with the development on the Dockside Lands or to deal with the applications by the Developer in a reasonably expeditious manner, provided that such application is consistent with this Agreement and any applicable laws and regulations.

## **21.0 RELEASE**

21.1 The City agrees that, upon an occupancy permit being issued for all buildings on any Development Area, this Agreement, except as provided in section 17.2, will cease to burden or encumber such buildings and the Lot on which they are

located and the Developer shall be entitled to sell all or any part of such buildings and such Lot to any person free and clear of the obligations of the Developer under this Agreement (other than under section 11.5, in the event that the Developer has sold all of the Development Area to a bulk purchaser). However, the Developer shall continue to be personally liable for any of its obligations under this Agreement which have not been fulfilled at the date of the issue of any such occupancy permit.

- 21.2 Concurrently with the issue of any occupancy permit by the City for all buildings on any Development Area, the City shall execute and deliver to the Developer a registrable discharge from the Lot on which such buildings are located of the covenants granted to the City to secure the Developer's development obligations under this Agreement (other than under section 11.5, in the event that the Developer has sold all of the Development Area to a bulk purchaser), as referred to in section 17.1 of this Agreement, provided that the Developer shall continue to be personally responsible for any of its obligations under this Agreement which have not been fulfilled at the date of the issue of any such occupancy permit.
- 21.3 Prior to the issuance of any occupancy permit as contemplated in sections 21.1 and 21.2 above, the Developer shall deliver to the City a certificate of the Developer as to whether the Developer is selling all buildings or strata lots on the relevant Development Area on a bulk sale basis or not. If the Developer certifies that it is not selling on a bulk sale basis, then the City shall not require the registration of the restrictive covenant referred to in section 11.5 against that Development Area.

## **22.0 TERMINATION AND EXTENSION**

- 22.1 In the event that the Sale Contract is terminated for any reason, and the transfer of the City Land does not complete, then this Agreement will terminate concurrently with such termination of the Sale Contract.
- 22.2 In the event that the AIP has not been issued by the Ministry by August 30, 2005, for any reason, other than as a result of any action or inaction on the part of the Developer or its employees, consultants, or others for whom the Developer is responsible at law, then the date by which the Developer or the City must fulfil any obligation under this Agreement shall be extended by the period of time the issuance of the AIP is delayed past August 30, 2005, to a maximum of two (2) years.

## **23.0 GENERAL PROVISIONS**

### **23.1 Notice**

It is hereby mutually agreed that any notice required to be given under this Agreement will be deemed to be sufficiently given if:

- (a) delivered at the time of delivery; and

- (b) mailed from any government post office in the province of British Columbia by prepaid registered mail addressed as follows:

if to the City:

#1 Centennial Square  
Victoria, B.C. V8W 1P6

Attention: Robert Woodland, Corporate Administrator  
Fax No.: (250) 361-0348

if to Dockside Green Ltd.:

c/o 510 - 815 West Hastings Street  
Vancouver, B.C. V6C 1B4

Attention: Mr. Jacques Khouri  
Fax No.: (604) 709-6909

Unless otherwise specified herein, any notice required to be given under this Agreement by any party will be deemed to have been given if mailed by prepaid registered mail, or sent by facsimile transmission, or delivered to the address of the other party set forth above or at such other address as the other party may from time to time direct in writing, and any such notice will be deemed to have been received if mailed or faxed, 72 hours after the time of mailing or faxing and, if delivered, upon the date of delivery. If normal mail service or facsimile service is interrupted by strike, slow down, force majeure or other cause, then a notice sent by the impaired means of communication will not be deemed to be received until actually received, and the party sending the notice must utilize any other such services which have not been so interrupted or must deliver such notice in order to ensure prompt receipt thereof.

## 23.2 Time

Time is to be the essence of this Agreement.

## 23.3 Binding Effect

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors, successors, and permitted assignees and successors in title.

## 23.4 Waiver

The waiver by a party of any failure on the part of the other party to perform in accordance with any of the terms or conditions of this Agreement is not to be construed as a waiver of any future or continuing failure, whether similar or dissimilar.

**23.5 Cumulative Remedies**

No remedy under this Agreement is to be deemed exclusive but will, where possible, be cumulative with all other remedies at law or in equity.

**23.6 Entire Agreement**

This Agreement when executed will set forth the entire agreement and understanding of the parties as at the date hereof with respect to the subject matter hereof and supersede all prior agreements and understandings among the parties with respect to the subject matter hereof and there are no oral or written agreements, promises, warranties, terms, conditions, representations or collateral agreements whatsoever, express or implied, other than those contained in this Agreement.

**23.7 Further Assurances**

Each of the parties will do, execute or deliver or cause to be done, executed and delivered all such further acts, documents and things as may be reasonably required from time to time to give effect to this Agreement.

**23.8 Amendment**

No amendment, waiver, termination or variation of the terms, conditions, warranties, covenants, agreements and undertakings set out herein will be of any force or effect unless they are reduced to in writing and duly executed by all parties to this Agreement.

**23.9 Law Applicable**

This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

**23.10 Fees**

To the extent that any of the Developer's obligations under this Agreement are secured by a financial guarantee provided by Vancouver City Savings Credit Union, the City will not require the Developer to post any additional security with respect to such obligations.

**23.11 Cooperation of Parties**

- (a) The Development will bring international interest to the City of Victoria as the result of the combination of the following unique aspects of the Development:
  - (i) size of the Development;

- (ii) environmental remediation on lands adjoining the Victoria Harbour;  
and
  - (iii) triple bottom line concept.
- (b) The Developer and the City will dedicate sufficient qualified resources to the Development to fulfill their respective obligations so that the Development may be completed in a timely manner.
  - (c) The Developer and the City will participate in conferences, seminars and presentations promoting the Development and the City.
  - (d) The Developer and the City agree to work together to ensure team continuity, including a City coordinator role, for the duration of the Development.
  - (e) Throughout the development of the Dockside Lands, the Developer will maintain public awareness and involvement through the community liaison group. This group may consist of members of the Victoria West Community Association, the greater community of Victoria, Council members and representatives from other stakeholder groups.
  - (f) The Developer and the City agree to work jointly, where appropriate, in preparing necessary case study reports (explaining aspects of the project and process) as well as a project website to host these reports to support the pursuit of additional potential funding sources.
  - (g) The Developer's obligations under this section 23.11 shall terminate on the Substantial Completion of the improvements in the Development.

**IN WITNESS WHEREOF** the parties hereto have set their hands and seals as of the day and year first above written.

**THE CORPORATION OF THE CITY OF VICTORIA** by its authorized signatories: )  
)

\_\_\_\_\_  
Mayor Alan Lowe )

\_\_\_\_\_  
Corporate Administrator Robert Woodland )

**DOCKSIDE GREEN LTD.** by its authorized signatories: )  
)

\_\_\_\_\_  
Name: )

\_\_\_\_\_  
Name: )

**SCHEDULE A**  
**REZONING BYLAW**

**SCHEDULE B**  
**DESIGN GUIDELINES**

**SCHEDULE C**

**SITE PLAN**

**SCHEDULE D**  
**DEVELOPMENT/AMENITY SCHEDULE**

## SCHEDULE E

### NOISE AND NUISANCE MITIGATION MEASURES

1. As the Development of the Dockside Lands proceeds, with each building permit application the Developer shall provide a report and recommendations prepared by persons trained in acoustics or by the architect for the Development, demonstrating that the noise level from off-site sources, in those portions of the building listed in the table reproduced below, shall not exceed the noise level expressed in decibels set opposite in the table reproduced below. For the purposes of such report the impact of any exterior noise from off-site activity in excess of quantitative bylaw standards, if any, applicable to such off-site activity shall be excluded. For the purposes of this section "noise levels" means the A-weighted 24 hour equivalents (Leq) sound level measured in decibels, as set out in the Canadian Mortgage and Housing Commission (Road & Rail Noise: Effects on Housing, 1986) (the "**CMHC standards**").

<u>Portion of Dwelling Unit</u>	<u>Noise Levels (Decibels)</u>
Bedrooms	35
Living, Dining, Recreation Rooms	40
Kitchen, Bathrooms, Hallways	45

The noise abatement or reduction recommendations contained in the report must be incorporated into the design of the building that is the subject of the building permit application.

2. In conjunction with registration of a strata plan for a building constructed on a Development Area, the Developer shall file in the Land Title Office a notice of different bylaws for the resulting strata corporation to add to the Standard Bylaws to the *Strata Property Act* a section providing that in view of the requirements of this Agreement and the Design Guidelines, and for reason of the Development's close proximity to certain industrial and commercial uses, and for reason of the provisions of the City's Noise Bylaw as they apply to the Dockside Lands, an owner shall not remove or alter, and the strata corporation shall not remove, alter or be required to approve removal or alteration of, any noise abatement or reduction building components incorporated into the original construction of the building. The Developer further agrees that it will not exercise its statutory right as owner developer to amend the strata corporation's bylaws by deleting or amending the bylaw section added pursuant to this section 2.

3. Without limiting the requirements of Section 1, to the satisfaction of the City, the Developer will utilize all or some of the following standard building specifications to assist with noise mitigation:
  - (a) Duct air directly to suites using either a central or individual heat recovery ventilator (HRV) approach.
  - (b) Improved acoustic performance of the wall assembly.
  - (c) Window design uses low E, argon filled glazing units with further glazing enhancements, such as strengthened glass and varying glass thickness to maximize sound wave length frequency reduction installed on noisy faces of buildings.
  - (d) Minimum R20 to R25 thermal insulation will be used depending on face of building.
  - (e) Orient building faces and windows to reduce noise concerns.
  - (f) Locate bedrooms away from noise where possible.
  - (g) Locate air exhausts away from operable windows and air intakes.
  - (h) Noisy industrial uses will be constructed of concrete or concrete block with proper insulation values to decrease noise transmission.
  - (i) The use of solarium balconies in living areas.
  - (j) Pervious surface areas to reduce traffic sounds.
4. Other noise and nuisance mitigation measures will be utilized on a site-wide basis:
  - (a) Sound insulation and acoustic properties of walls.
  - (b) Traffic calming design measures in the plan will reduce traffic noise.
  - (c) Source control for noise and pollution.
  - (d) Controlling air leakage in certain industrial and retail uses like restaurants.
  - (e) Limiting construction work to specific hours.

## **SCHEDULE F**

### **TRANSPORTATION DEMAND MANAGEMENT STRATEGIES**

#### **1. Car Share Program**

The parties will work together to ensure that residents have minimum impediment to joining the car share. The Developer will provide a minimum of 10 car share vehicles for the Development in phases as outlined in Schedule D of this Agreement to be operated by a car co-op entity or other non-profit organization. Alternatively, the Developer will buy car share co-op memberships to the value of \$240,000 for Dockside Green residents and not charge the residents for such membership fees.

The vehicles will be a mixture of neighbourhood electric vehicles and high fuel-efficient vehicles (60 mpg+). The operation and maintenance of vehicles will be through a car share co-op or other non-profit organization.

The car share program will be available to both residential and commercial uses on site.

The City will incorporate into the parking planning for Tyee Road and Harbour Road provisions for the encouragement of car share vehicles and other alternative use methods of transportation such as free parking for car share vehicles, shorter parking stalls to encourage parking for smaller forms of transportation such as high fuel-efficient vehicles, motorcycles, mopeds, etc.

As a part of the information package the Developer is required to provide to prospective purchasers from the Developer promotional material on the car share program provided on site.

#### **2. BC Transit**

The project will work closely with BC transit to address peak hours (7:30 am to 8:30 am and 4:00 pm to 5:00 pm, Monday to Friday excepting holidays) and encourage BC Transit to provide smaller shuttle bus service for the Development.

Bus routes information will be provided to residents via the Developer's website. The Developer will also explore other strategies with BC transit (such as subsidized bus passes) to promote ridership and to ensure bike racks exist on buses servicing the Development.

It is understood by the Developer that amenities and facilities such as lay-bys and shelters may require easements and the Developer will consent to such reasonable easements at no cost to the City.

The Developer's obligations under this section 2 shall terminate on the Substantial Completion of all improvements in the Development.

### **3. Mini-Transit**

The project will establish a Dockside mini-transit service through the car share company or other alternative company. As per the amenity Schedule D, the Developer will purchase a mini-transit vehicle(s) at the value of \$60,000. The vehicle(s) will be run during the day and possibly at night depending on demand. This strategy will be balanced with the provision of on-site car share program to monitor the most effective strategy and increase service for either service as required.

Transportation to downtown will focus on key drop off points where people work and key locations like the float planes. In addition, senior assisted living housing will be located near the site's commercial village to ensure easy access for seniors and other residents to the mini transit service, which will also service the commercial shopping center located off Bay Street. The idea is to ensure seniors have pedestrian access to the commercial resources on-site and flexible, convenient access to offsite destinations.

### **4. Bicycle Traffic and Storage**

The Developer will provide bicycle racks to the LEED or City standard whichever is greater. The requirement as defined by LEED is Bicycle racks provided for 15% of residential occupants, bicycle racks and shower facilities provided for 5% of commercial, office, industrial uses. The Developer will provide additional lock up racks if demand warrants.

In addition, bike racks will be provided above grade throughout the development to allow easy movement within Dockside. Bikes will also be provided for hotel guest users. The 150 additional bike racks will be phased in accordance with the Development Amenity Schedule D.

### **5. Education**

A key to the Developer's strategy is working with key interest groups like bicycle associations, BC transit etc. to explore innovative approaches that the Developer can support or test on site. The Development should be a leader in alternative transportation.

Education and informational support will also be a key component in promoting bikes, transit, pedestrian modes of traffic. The Dockside website will highlight the main routes for the various uses and information on car share and carpooling programs. Individual information will also be given to residents and employees on the Development.

Working with the CRD and bicycle associations online bicycle user information will be provided on the Dockside web. Information on the type of bikes, how to pack, be prepared for weather changes, safety tips etc will be provided.

The Developer's obligations under this section 5 shall terminate on the Substantial Completion of all improvements in the Development.

## SCHEDULE G

### AMENITIES

The following is a list of amenities being provided for the Development. Certain of the amenities described in this Schedule are generally depicted on Schedule C.

1. **Accesses across Harbour Road:** The site plan attached as Schedule C identifies several grade crossings in numerous locations that are identified with textured paving changes. These are located at:
  - (a) At the corner of Esquimalt Road and Harbour Road where the pedestrian staircase from the bridge accesses the site at a location approved by the City.
  - (b) Across Harbour Road at northeast corner of Lot 3 to Lot 4 where the traffic calming device is located across the traffic calming device on the south end of the Site.
2. **Staircase on south east end of site from Johnson Street Bridge:** A concrete pedestrian staircase and pathway will be provided from the Johnson Street Bridge to the intersection of Harbour Road and Esquimalt Road. This connection will reinforce the pedestrian entry and plaza at the south end of Lot 1 as a major focal point when approaching the site from downtown Victoria. The City will maintain this staircase.
3. **Improvements to Esquimalt Road:** Trees will be planted along Esquimalt Road per site plan – see Schedule C.
4. **North South Greenway:** The greenway will be constructed in accordance with the Design Guidelines.
  - (a) **North South Pedestrian trails and connections:** This represents the sidewalk through the site north/south along the greenway including benches along sidewalks.

The primary north/south and the east west greenway linkages will focus primarily on pedestrian access. The trail will be barrier-free. Separation of public open space from adjacent residential uses would be achieved with natural planted areas, and water bodies comprised of a linear system of detention ponds and water channels. This will be a major ecology feature for the development with a constant flow of water.
  - (b) **Green Space:** This includes a mixture of plantings, high performance irrigation, rainwater collection for green way system and other miscellaneous planting on site.

- (c) **Water Features and Creek Throughout:** The Dockside project will exhibit the qualities of an urban watershed. Like a natural watershed, runoff will be contained, dissipated and channelled through a hierarchy of waterways that will employ biological processes to clean and filter water as it moves down slope. Treated water from the sewage treatment facility and runoff from roofs, streets and hard landscaped areas would flow into the central north/south water channel to be detained and cleansed within the Site's ecosystem. Human intervention using weirs, runnels, ponds and stream channels would be added to assist, reveal and celebrate the natural processes at work.
5. **Vista Park Pathway and Triangle Park Pathway:** Two main east-west pedestrian connections (Vista Park and Triangle Park connections) will provide access to the central north south Greenway from Tyee to Harbour Road. To respond to some significant grade changes, from an elevation of 12m on Tyee Road to 4m on Harbour Road, the east/west green linkages are connected by stairs and are not required to be universally accessible.
6. **Large Plaza/ Community Amphitheatre/Stage in Lot 1 and Esquimalt/Tyee/Harbour Connections:** The community amphitheatre and stage oriented to the East will be constructed as a focal point in the centre of the South Plaza/Turnaround. A canopy structure will provide shade and definition over the stage area. Sculpturally designed, the canopy will serve as a shading structure as well as a demonstration of solar energy employing solar cell fabric and/or conventional solar panels. An integrated, slope concrete path will be constructed to provide barrier free access to all levels of the slope and to the stage. There will be a plaza entrance from South/East of Johnson Street Bridge lined with trees. Road access from Esquimalt road to the plaza complete with parking will be provided. The plaza will incorporate plaza turnaround, pond and landscaping. The amphitheatre will be equipped with suitable potable water and sufficient electrical power to accommodate people and equipment for performances.
- Connections to the Central Plaza in Phase 1 from Tyee and Harbour Road will be provided. The connection between Tyee Road and the Main Plaza will negotiate a significant grade change of approximately 6-8metres requiring a series of stairs and therefore does not have to be barrier free.
7. **Pedestrian Access on Lot 4:** There will be extension of the trail from the Upper Harbour Place Phase II along the Bay Street Bridge through the Site to provide for pedestrian access to the Galloping Goose Trail. The width and treatment will be consistent with that provided by Upper Harbour Place Phase II. This Amenity is not barrier-free. There would also be connection for residents on Lot 4 to the Galloping Goose Trail.

- 8. Internal Road/Pedestrian areas for Industrial areas along Harbour Road:** Two sets of stairs from greenway trail system to industrial areas will be included. Also included are the road/parking surfaces with natural swales.
- 9. Pervious paving/walkways in Parking Areas:** Parking areas will include natural swales and vegetated areas. Installation to align with buildings.
- 10. Extensive Tree Planting:** The project includes extensive tree planting throughout the development. A formal treed boulevard along Esquimalt Road contrasts with fluid wilds off the internal greenway. Industrial parking/loading areas will have trees between parking stalls to create shade and calm the spaces. Pockets of shade trees will be clustered at the south and west facades of residential buildings to reduce solar heat gain. Plazas will include high canopy trees to provide shading, enclosure and clear low level site lines. Indigenous or adaptive species will be used to reinforce the west coast marina character of the project. A total of 400 trees will be planted on site of various sizes.
- 11. Improvement to the Galloping Goose Trail:** The Galloping Goose Trail is an important regional connection through the site. Its alignment along Harbour road provides key pedestrian and bicycle linkages south to the City centre via the Johnson Street Bridge and north through Point Ellice Park. The designated bike route provided on each side of Harbour Street will be identified by a different colour scheme to easily identify the trail and highlight its importance. The Galloping Goose bike trail will be enhanced with the traffic calming structures on the south and north end of the site to allow safe passage for bikes and slow traffic (see site plan on Schedule C). In addition textured paving will be introduced across Harbour Road on the North end of site (but not on the bicycle path) to slow traffic for cyclists. Signage will also be provided.

The Developer will also provide traffic islands at the north and south end of Harbour Road.

The Galloping Goose, between the Point Ellice Bridge and Harbour Road, shall be upgraded to be consistent with the City of Victoria Greenways Plan and the waterfront pathway approved for the Railyards Project. This will include a four (4) metre wide multipurpose path and a two (2) metre wide pedestrian path separated by a landscape median. The minimum width of the landscape median will be one (1) metre.

- 12. Waterfront walkway (dock) and small boat launch:** A waterfront walkway along Lot 4 at Point Ellice Park. The walkway will be cantilevered from shore or piled and a floating dock for the harbour ferry will be provided. The dimensions of dock walkway must be 3 meters by 74 meters. The harbour ferry dock must accommodate 12 people and must be 2 meters by 10 meters. The waterfront will be cleared of the current invasive scrub and replaced as outlined in "Shoreline Enhancement and Restoration" below. The design must be approved by the City prior to construction and be certified by a structural engineer upon completion.

A small boat launch will also be provided similar to the Selkirt Waterfront development for small non-motorize craft access such as kayaks or appropriate launch from the waterfront walkway dock.

- 13. Shoreline Enhancement and Restoration:** The north end of the property – Point Ellice Park – consists of undeveloped land largely covered by scrub vegetation (dominated by broom and noxious weedy species). The shoreline is an undulating edge of abandoned concrete wharf abutments, rock-stack rip-rap and rocky outcroppings. The shoreline plant community also is dominated by weedy species and mature broom. The inter-tidal zone consists of an unstable cobble, gravel, sandy benthic complex largely devoid of seaweeds or other marine species.

The re-development of the Point Ellice parkland portion of the project would restore the upland plant community by replacing the existing weedy species with a mix of native and adaptive species approved by the Director Parks, consistent with the expected capital budget outlined in Schedule D. The intent would be to provide an aesthetic plant community that maximized a range of habitat values for small mammals and avian species. The upslope plant community would be designed to provide nesting and rearing species, together with a range of food species (e.g. berry and seed producing). The shoreline will require the use of small segments of rip-rap to be installed to stabilize the upper inter-tidal zone. These sections will be integrated with the existing concrete abutments; the latter provide continuity with the Docklands history as a working harbour. This zone – the boundary between sea and land – provides a varied habitat for a richly diverse assemblage of plants and the animals that depend upon them.

The inter-tidal zone should be assessed for its potential to be restored as a functional marine ecosystem through the creation of large rocky habitat complexes. These structures would provide stable surfaces for the algal community that, in turn, provide the luxuriant growth for a wide range of marine animal species (e.g. star fish, crabs, urchins, fish, etc.).

Species and habitat using a large diversity of flora and fauna will help restore and enhance the shoreline along Point Ellice Park. Where possible existing rip rap would be reconfigured with pockets of native tree and shrub planting and combined terraced beds of aquatic vegetation.

Native and adaptive species planted to the satisfaction of the Director of Parks.

- 14. Play Area:** In the central North/South Greenway, a neighbourhood play area will be provided and maintained within close surveillance of neighbouring residential units. The play area and equipment will be constructed and maintained to CSA standards to a plan approved by the City, such approval to be within the expected capital budget as outlined in Schedule D. For certainty the materials used, to the extent possible and practical, will be non-toxic, biodegradable, reusable, recyclable and durable.

**15. Public Art:** In this section:

**“Public Art”** means artistic visual works selected, commissioned, created or donated for locations in a public space or facility accessible to members of the public, and includes works of a permanent or temporary nature located in the public domain, but does not include:

- (a) reproduction, by mechanical or other means, of original works of art,
- (b) decorative, ornamental or functional elements which are designed by an architect with no consultation with artists, or
- (c) landscape elements not specifically designed as an integral part of a public art project.

**“Professional Artist”** means a person who by virtue of professional training, exhibition history and/or critical review is recognized as skilled in creating works of art.

Prior to the Developer making any binding contractual commitments for the provision of Public Art, the Developer must submit to the City a plan describing the full details of any proposed Public Art installation for that Development Phase demonstrating compliance with the requirements of this Schedule, to the satisfaction of the Director of Planning. Further, the Developer must consult the Community Liaison Group in the selection of the artist and provision of the Public Art for any Development Phase.

The Developer will commission local Professional Artist(s) and provide Public Art to the value set out in Schedule D, (total of \$187,500) that supports the themes of historic uses (marine, industrial, First Nations) and environmental features.

In addition, the following artistic features will be provided:

- (a) Bike racks that are artistic and functional in nature but not repetitive in nature
- (b) Benches throughout the site that are art forms
- (c) Old marine artifacts incorporated in art forms and public realm features
- (d) Fountains/landscape forms
- (e) Internal green trail system (landscaping, ponds, creek, trail)
- (f) Main plaza area

- (g) Landscape design that focuses on a range of colours, textures, and plant types in public and private spaces, on rooftops, throughout the greenway, and in specific landscape as art installations
- (h) Functional signage describing the history of the site, as well as the new ecological features demonstrated
- (i) Water features built into the central greenway and the main plaza

The value of the items above will satisfy the 1% of construction costs committed in the Developer's Proposal. Refer also to Schedule D.

Ongoing maintenance costs will be covered by the Developer (unless the City is responsible therefor under this Agreement) until the responsibility therefor is transferred to the individual strata councils and commercial uses, at which time these costs will form part of the strata and common area costs for the development. These costs will be covered in lease documents and strata by-laws and purchasers and lessees will be made aware of these costs.

- 16. Historical, First Nations and Environmental Signage:** The public open spaces are a resource shared not only by people but also a large diversity of plant and animal species working together to create a balanced ecosystem. Interpretation of the site's natural processes by way of interpretive signage, environmental art, and creative detailing of engineered systems should improve public appreciation of the ecological framework and a greater understanding of their role in maintaining a balanced ecosystem. As well, signage must reflect the cultural and historical roles played out in this area, encompassing an appreciation for the context of the development in terms of the local First Nations people's heritage and the industrial / marine uses that have been prevalent throughout the site's history.

The Developer will provide signage throughout the Site to highlight the above and way finding signage, subject to the approval of the City, such approval to be consistent with the capital budget as outlined in Schedule D.

The Developer shall be responsible for consultation with First Nations regarding form and content of First Nations interpretative information.

A clear distinction will be made between signs located on lands maintained by the City and signs located on lands to be maintained by others.

- 17. Highlighting Environmental Technologies:** We will be highlighting various innovative renewable energy and other environmental products throughout the development with emphasis on local and BC companies.

**18. Sustainability Center:** The Developer will contribute \$400,000 to the establishment of the Victoria Sustainability Centre (the “**Sustainability Centre**”) under the following general terms:

- (a) The Sustainability Centre will be a minimum of 2,000 m<sup>2</sup> and may be increased in size by up to a further 2,645 m<sup>2</sup> of additional like space.
- (b) The size of the Sustainability Center, if greater than 2000 m<sup>2</sup>, will be exempt from density calculations, to a maximum total floor area of 4654 m<sup>2</sup>.
- (c) The Developer must recognize in a suitable commemorative public format, the contribution by the citizens of Victoria.
- (d) The building will provide space for non-profit and for profit environmental groups and will possibly include First Nations component, common board room, meeting rooms, training facilities, public washroom and library. The components of Sustainability Center will be determined by the sustainability committee group, Vic West Community association and the City.
- (e) To make the economics of the Sustainability Center approach as near a “break even” position as possible the following will be undertaken:
  - (i) The ownership of the Sustainability Center will be a cooperative or other non-profit type of ownership.
  - (ii) The market rents from the commercial and the “for profit environmental groups” will help provide income to service the financing necessary to build the facility.
  - (iii) The Developer has agreed to forgo development profit on this initiative with the exception of development overhead.
  - (iv) The Developer will work with environmental groups to assist in the raising of capital in order to contribute to the equity requirement and ensure the completion of a building exhibiting leading edge environmental techniques.
  - (v) The Developer will seek low interest rate financing for the Sustainability Center from Vancity.

The Developer’s obligations with respect to the Sustainability Centre shall terminate upon the construction of the Sustainability Centre and the transfer of the title thereto to a cooperative or other non-profit organization or upon the payment of \$400,000 in lieu thereof pursuant to section 8.9 of this Agreement.

- 19. Public Washroom:** The Developer will provide a small public washroom in Lot 1, likely within the Sustainability Center or within another building, with a separate outside entrance or free standing. The structure (minimum 30 m<sup>2</sup>) will include two (male and female) accessible washrooms, built of durable quality materials and apply design which considers family use and CPTED principles. Such washroom is to be constructed on the basis that it is to be as vandal-proof and inexpensive to maintain as is reasonably possible and is to include a hot water connection for janitorial use. Such washroom must be acceptable to the Director of Parks, acting reasonably. In the event the public washroom is to be constructed as a free standing facility, for the purposes of this Agreement the monetary value of that Amenity as set out in Schedule D shall be increased to \$40,000.00.

## SCHEDULE H

### STATUTORY RIGHT OF WAY

#### TERMS OF INSTRUMENT – PART 2

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#### W H E R E A S:

- A. The Grantor is the registered owner of an estate in fee simple of all and singular those certain parcels or tracts of land and premises situate, lying and being in the City of Victoria, Province of British Columbia, and being more particularly known and described as:

PID

(the “**Lands of the Grantor**”);

- B. The Grantee is The Corporation of the City of Victoria;
- C. The Grantor and the Grantee are parties to a Master Development Agreement dated September 7, 2005, (the “**MDA**”) respecting the development of the Lands of the Grantor;
- D. The Grantee wishes to secure the public right of access to and use of a [*pedestrian and cycle path/public washroom/plaza*] in perpetuity over the Lands of the Grantor (the “**Right of Way**”);
- E. The Grantor has agreed to grant a Statutory Right of Way on the terms hereinafter set forth.
- F. It is necessary for the operation and maintenance of the Grantee’s undertaking of the provision of [*insert description of Amenity*] for the enjoyment and use of the general public that a right of way be established in accordance with this instrument.

**NOW, THEREFORE, THIS INDENTURE WITNESSES** that in consideration of the sum of One (\$1.00) Dollar of lawful money of Canada, now paid by the Grantee to the Grantor and other valuable consideration (the receipt and sufficiency of which is hereby acknowledged by the Grantor), and in consideration of the covenants hereinafter contained:

1. The Grantee, its officers, servants, agents, licensees and invitees, who shall include the general public, may use that part of the Lands of the Grantor outlined in bold on the statutory right of way plan registered in the Land Title Office under No. \_\_\_\_\_, a registered copy of which is attached as Schedule A to this Agreement (the “**Right of Way Area**”), and all improvements within the Right of Way Area, as a [*insert purpose/description of Amenity*].

2. Without limiting the generality of this grant, the Grantee may, but shall not be obligated to, enter upon the Right of Way Area and carry out repairs or replacements of the **[insert description of public Amenity]**, provided that this section shall not relieve the Grantor of its obligation to maintain the **[insert description of Amenity]** as set out in **[insert reference to instrument requiring Grantor to maintain]**.
3. This grant is made pursuant to the provisions of section 218 of the *Land Title Act*, R.S.B.C., 1996 C. 250.
4. The Grantor covenants not to erect any building, structure or obstruction on the Right of Way Area, other than the **[insert description of Amenity]** existing as of the date of this Agreement.
5. Where the Grantor, in breach of this covenant, erects any building, structure or obstruction within the Right of Way Area, the Grantee shall be at liberty to remove it at the expense of the Grantor.
6. The covenants contained in this grant bind the Grantor and his successors in title to the Lands of the Grantor comprising the Right of Way Area.
7. Upon any subdivision of the Lands of the Grantor, this agreement shall be read and construed as a number of agreements, such that the owner of any Lot created by such a subdivision is liable for a breach of this agreement only to the extent that it relates to the Lot owned by such owner.
8. The Grantor from time to time hereunder shall not be liable for any breach of this agreement which occurs after such person has ceased to be the owner of the Lands of the Grantor.

**IN WITNESS WHEREOF** the parties hereto have executed these presents in the Form C and D (pages 1 and 2) attached hereto.

**SCHEDULE I**

**LICENCE AGREEMENT**

**THIS AGREEMENT** is made the      day of                      , 2005.

**BETWEEN:**

**THE CORPORATION OF THE CITY OF VICTORIA**

City Hall, #1 Centennial Square  
Victoria, B.C. V8W 1P6

(the "**City**")

**OF THE FIRST PART**

**AND:**

**DOCKSIDE GREEN LTD.**

(#BC0716742)

c/o 510 - 815 West Hastings Street  
Vancouver, B.C. V6C 1B4

(the "**Developer**")

**OF THE SECOND PART**

**WHEREAS**

A. The Developer is the registered owner of:

(the "**Land**")

B. The Developer and the City are parties to a Master Development Agreement made as of September 7, 2005;

C. Pursuant to section 8.17 of the Master Development Agreement, the Developer has agreed to grant to the City a licence to use a portion of the Land as a public pathway;

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of the sum of \$1.00 paid by the City to the Developer in consideration of the mutual promises

contained in this Agreement, the Developer and the City covenant and agree with each other as follows:

## **1.0 LICENCE TO USE**

1.1 The Developer hereby grants tot the City a licence for the City and its agents, employees and invitees to use that part of the Land outlined in bold on the plan that is attached as Schedule A (the "**Licence Area**") as a public pathway for recreational pedestrian and non-motorized vehicle traffic, and for no other purpose (the "**Pathway**").

## **2.0 TERM**

2.1 The term of the licence granted under this Agreement shall be from the date of this Agreement until completion of the Point Ellice Park Improvements required under section 8.17 of the Master Development Agreement.

## **3.0 MAINTENANCE**

3.1 Throughout the term of this Agreement, the City shall:

- (a) maintain the Pathway that is located within the Licence Area in a safe condition, and in a condition that is suitable for its use as a public pathway; and
- (b) be solely responsible for all costs incurred in maintaining the Pathway.

## **4.0 GENERAL PROVISIONS**

4.1 This Agreement may not be assigned by either party without prior written consent of the other party, except that the Developer shall be entitled to assign this Agreement to any other person to whom it is entitled to assign the Master Development Agreement.

### **4.2 Notice**

It is hereby mutually agreed that any notice required to be given under this Agreement will be deemed to be sufficiently given if:

- (a) delivered at the time of delivery; and
- (b) mailed from any government post office in the Province of British Columbia by prepaid registered mail addressed as follows:

if to the City:

#1 Centennial Square  
Victoria, B.C. V8W 1P6

Attention: Rob Woodland, Corporate Administrator  
Facsimile: (250) 361-0348

if to Dockside Green Ltd.:

c/o 510 - 815 West Hastings Street  
Vancouver, B.C. V6C 1B4

Attention: Mr. Jacques Khouri  
Fax No.: (604) 709-6909

Unless otherwise specified herein, any notice required to be given under this Agreement by any party will be deemed to have been given if mailed by prepaid registered mail, or sent by facsimile transmission, or delivered to the address of the other party set forth above or at such other address as the other party may from time to time direct in writing, and any such notice will be deemed to have been received if mailed or faxed, 72 hours after the time of mailing or faxing and, if delivered, upon the date of delivery. If normal mail service or facsimile service is interrupted by strike, slow down, force majeure or other cause, then a notice sent by the impaired means of communication will not be deemed to be received until actually received, and the party sending the notice must utilize any other such services which have not been so interrupted or must deliver such notice in order to ensure prompt receipt thereof.

#### 4.3 Time

Time is to be the essence of this Agreement.

#### 4.4 Waiver

The waiver by a party of any failure on the part of the other party to perform in accordance with any of the terms or conditions of this Agreement is not to be construed as a waiver of any future or continuing failure, whether similar or dissimilar.

#### 4.5 Cumulative Remedies

No remedy under this Agreement is to be deemed exclusive but will, where possible, be cumulative with all other remedies at law or in equity.

4.6 Entire Agreement

This Agreement when executed will set forth the entire agreement and understanding of the parties as at the date hereof with respect to the subject matter hereof and supersede all prior agreements and understandings among the parties with respect to the subject matter hereof and there are no oral or written agreements, promises, warranties, terms, conditions, representations or collateral agreements whatsoever, express or implied, other than those contained in this Agreement and the Master Development Agreement.

4.7 Further Assurances

Each of the parties will do, execute or deliver or cause to be done, executed and delivered all such further acts, documents and things as may be reasonably required from time to time to give effect to this Agreement.

4.8 Amendment

No amendment, waiver, termination or variation of the terms, conditions, warranties, covenants, agreements and undertakings set out herein will be of any force or effect unless they are reduced to in writing and duly executed by all parties to this Agreement.

4.9 Law Applicable

This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

**IN WITNESS WHEREOF** this Agreement has been executed by the parties hereto as of the day, month and year first above written.

**THE CORPORATION OF THE CITY OF** )  
**VICTORIA** by its authorized signatories: )  
) )  
) )  
\_\_\_\_\_) )  
Mayor Alan Lowe )  
) )  
) )  
\_\_\_\_\_) )  
Corporate Administrator Robert Woodland )

**DOCKSIDE GREEN LTD.** by its authorized )  
signatories: )  
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\_\_\_\_\_)  
Name: )  
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\_\_\_\_\_)  
Name: )

## SCHEDULE J

### DEVELOPER'S ANNUAL REPORT CONTENT

The intent of this report is to establish a baseline of performance for the Developer. The measures will also assist the City and other interested parties to measure the long-term effects and benefits of the Dockside Project. Finally, this information will also save considerable time and resources of the project team because it will create a record of the development to which inquiries about the development may be directed.

This report will consist of two parts:

- 1) Provision of the LEED credit checklists generated (by building or development area, as appropriate) and status of each credit.
- 2) Provision of status on the objectives outlined below (based on the Request for Proposal Evaluation Criteria)

The timeline for providing this report is annually beginning in 2006, or in support of specific Regulatory Approval request, whichever comes first, until the City has issued the final occupancy permit, at which time the Developer will provide one final summary report.

#### **General Objective: Site Remediation**

Based on the Approval in Principle obtained from the Ministry of Environment, the Developer will be responsible for site remediation, in accordance with the terms of the Sale Contract.

Item	Objective	Reporting content	Source	Status
1	Remove all hazardous materials	Extent of hazardous material removed per site	Consultant Report/Certificate of Compliance	
2	Complete risk management as per terms set out in Certificate of Compliance	Reporting to Ministry of Environment	Consultant Report/Certificate of Compliance	

Reference also LEED credit checklist:

- 1) Sustainable sites – prerequisite 1, credit 1, 2, 3

**General Objective: Land Use/Housing Affordability**

Create a wide mix of uses that provide a unique living, working and visiting environment within close proximity. The mix of land uses supports:

- 1) a broadly representative residential community that includes a range of income brackets, stages of life, and ownership/rental structures;
- 2) a working land base that allows residents to live close to where they work and generate new jobs in the City. It includes commercial, retail, light industrial, and live-work/work-live uses, allowing for a vertical as well as horizontal mix of uses;

Item	Objective	Reporting content	Source	Status
3	Create a broad mix uses consistent with the Development Concept	Buildable area of following uses: residential, office, retail, commercial, industrial, public/institutional	Development Permit Application	
4	Create a mix of residential units that satisfies a broad range of ages and stages of life	Residential units divided into: dedicated seniors housing, live/work, work/live, family (2 bedroom or more)	Development Permit Application	
5	Create a mix of residential units that satisfies a broad range of income brackets and unit tenure	<ul style="list-style-type: none"> <li>• Number of purpose built rental residential units</li> <li>• Number of purpose built ownership residential units</li> <li>• Amount of the Developer's Affordable Housing Allocation used to provide non-market units/how many units</li> <li>• Identification of non-profit organization operating non-market units</li> <li>• Amount of the Developer's Affordable Housing Allocation used to provide market affordable units/how many units</li> <li>• Identify what efforts have been made to secure additional funding (initial 6 years after closing only)</li> </ul>		

Item	Objective	Reporting content	Source	Status
6	Mix of land use optimizes post construction employment	Calculated based on following assumption: Office – 1 person year/250 ft <sup>2</sup> Retail/commercial – 1 person year/500 ft <sup>2</sup> Industrial – 1 person year/500 ft <sup>2</sup>		
6a	Support local employment/ education (proposal related)	<ul style="list-style-type: none"> <li>• Coordination/collaboration with local learning institutions to support education and training opportunities</li> <li>• Extent to which Developer has worked with local businesses to support them (organic food company, home delivery, web pages for information)</li> <li>• Extent to which the Developer has located and encouraged value based businesses</li> <li>• Extent to which the Developer has coordinated with the First Nations community to provide opportunities for construction work</li> </ul>		
7	Concerns about noise and air pollution are addressed through design	Compliance with the noise and nuisance mitigation measures	Building Permit Application	
8	Overall development density doesn't vary from approved density	Buildable area and site area	Development Permit Application	
9	Development density by site doesn't vary more than the percentages allowed through zoning/design guidelines	Buildable area and site area	Development Permit Application	

Item	Objective	Reporting content	Source	Status
10	The development limits impact to municipal infrastructure and utilities(sewer, water, storm sewer, power)	<ul style="list-style-type: none"> <li>• Status of on-site sewage treatment system</li> <li>• Status of waste wood co-generation system</li> <li>• Status of bio-diesel plant</li> <li>• Status of storm water management system</li> <li>• Amount of grease collected from local restaurants and re-used</li> </ul>	Development Permit Application Building Permit Application Guarantee Release	

Reference also LEED credit checklist:

- 1) Sustainable sites – credit 2, 5.1, 5.2, 6.1, 6.2
- 2) Water efficiency – credit 1.1, 1.2, 2, 3.1, 3.2, plus innovation credit
- 3) Energy and atmosphere – 1.1 to 1.10, 2.1to 2.3

**General Objective: Environment/LEED Considerations**

Rehabilitate an industrial site so that green infrastructure and natural habitats function ecologically and significantly decrease the use of natural resources (when compared with similar conventional developments), including:

- 1) Minimizing carbon dioxide emissions through energy efficiency;
- 2) Minimizing solid waste outputs, costs and landfill space requirements;
- 3) Minimizing water use and the need for expansion of water supply infrastructure in the region;
- 4) Setting an example for the region by providing onsite secondary treatment of liquid waste;
- 5) Using only reclaimed water for outdoor landscape requirements;
- 6) Providing a network of high quality public open and green spaces and naturalized habitats that provide ecosystem benefits.

Item	Objective	Reporting content	Source	Status
11	The buildings in risk assessed areas are design to include a soil vapour barrier or other approved engineered vapour controls	<ul style="list-style-type: none"> <li>• Building construction details and specifications</li> </ul>	Certificate of Compliance  Building Permit Application	
12	The buildings obtain the highest LEED certification feasible	<ul style="list-style-type: none"> <li>• Confirm how many buildings (where LEED standard is applicable) meet LEED Platinum standard</li> <li>• Confirm how much of the LEED penalty (if any) has been paid to the City by the Developer</li> </ul>	LEED checklists and certification per building	

Item	Objective	Reporting content	Source	Status
12a	Pursue other Sustainable development strategies (proposal related)	<ul style="list-style-type: none"> <li>• Extent of support for values-based businesses</li> <li>• Extent of selection of sustainable building materials and services that create employment locally (synthetic lumber, green roof systems, native plant material, tile, terrazo counter tops, reclaimed/sustainably harvested wood, non-ureaformaldehyde substrates, compressed wheatboard, high recycle-content metals, fly-ash content cement)</li> <li>• Identify how local products have been showcased on site</li> <li>• Extent to which the Development has showcased structural monitoring technology that tracks moisture penetration in buildings</li> <li>• Consideration of fruit and nut trees where agreed upon by the City Department of Parks</li> <li>• Extent to which tree seedlings have been planted (either in the development or in the City) equivalent to the number of trees used in construction on site</li> <li>• Extent to which bio-diesel has been used for treatment of concrete formwork</li> <li>• Extent to which all initial residents have received a 6 month supply of green cleaning products</li> </ul>		

Reference also LEED credit checklist:

- 1) Sustainable sites – credit 7.1, 7.2, 8
- 2) Energy and atmosphere – prerequisite 1, 2, 3, and credits -3, 4,5
- 3) Materials and resources – prerequisite 1, all credits 1-8
- 4) Indoor air quality – prerequisite 1,2, all credits 1-8
- 5) Innovation and design process – credits 1.2, 1.3, 1.4 and 2

**General Objective: Circulation/Mobility**

Create a transportation network that places priority on active living and non-motorized forms of transportation to minimize hard infrastructure costs over the long term, promote healthy lifestyles for those who live, work and recreate at the Dockside Project, and minimize the environmental pollution associated with transportation, by:

- 1) Encourage access to and from the site by walking, cycling, transit (including mini-transit), car share, water transport or automobile – in that order of priority;
- 2) Promoting transportation modes that are sustainable to maintain and service;
- 3) Maintaining a pedestrian friendly and inviting streetscape;
- 4) Minimizing the impact of parking and manage surface parking through best management practices.

Item	Objective	Reporting content	Source	Status
13	The Development encourages a sense of connectedness and a sense of community	Status of pedestrian, cyclist and vehicle connections, intersections and crossings		
14	Modes of transportation of sustainable to maintain and service, now and in the long term	<ul style="list-style-type: none"> <li>• Status of provision of information packages to prospective purchasers</li> <li>• Status of the Dockside website highlighting pedestrian, bicycle, and public transit routes, information on car share and car pooling programs, and online bicycle user information</li> </ul>		

Item	Objective	Reporting content	Source	Status
15	The Development encourages alternate modes of transportation	<ul style="list-style-type: none"> <li>• Status of the provision of 10 car share vehicles (combination of neighbourhood electric and high fuel efficient vehicles) for the Development or purchase of car share co-op memberships to the value of \$240,000 for Dockside residents</li> <li>• Status of the provision of dedicated parking for the car share vehicles</li> <li>• Status of exploring alternative strategies with BC transit (such as subsidized bus passes)</li> <li>• Status of amenities and facilities to support public transit (such as lay-bys and shelters) and related easements</li> <li>• Status of a mini-transit service purchase at the value of \$60,000</li> <li>• Status of provision of bicycle racks for a minimum of 15% of residential occupants and bicycle racks and shower facilities for a minimum of 5% of commercial/office/industrial users</li> <li>• Status of provision of access to bicycles for hotel guest</li> <li>• Status of the provision of an additional 150 bicycle racks throughout the Development</li> <li>• Ratio of parking spaces per residential unit sold</li> <li>• Ratio of parking spaces per buildable square foot of other uses sold/provided as</li> </ul>		

Item	Objective	Reporting content	Source	Status
		compared to approved parking variance ratios (as per schedule C of City's zoning by-law for Dockside)		

Reference also LEED credit checklist:

- 1) Sustainable sites – credit 4.1, 4.2, 4.3, 4.4

**General Objective: High Quality Public Realm**

The Development will provide a network of high quality public open and green spaces and naturalized habitats that provide ecosystem benefits (the ecological processes, both natural and engineered, that provide economic and environmental benefits in urban areas) as well as urban living benefits by being pedestrian friendly, safe, and supporting a range of work and leisure activities.

Item	Objective	Reporting content	Source	Status
<b>16</b>	The streetscape is pedestrian friendly and of a an appropriate scale relative to the proportions of the human body	Indication of how design complies with design guidelines with respect to scale and format of streetscape and pedestrian areas	Development Permit and Building Permit Applications	
<b>17</b>	The Development meets CPTED requirements	Indication of how building and site design complies with CPTED requirements	Development Permit and Building Permit Applications	
<b>18</b>	The operating costs of the public realm elements are paid for by the Developer /Development			
<b>19</b>	The natural shoreline is enhanced and protected			

<p><b>20</b></p>	<p>The Development will provide or accommodate the following provisions:</p> <ul style="list-style-type: none"> <li>1) Waterfront walkway and small non-motorized boat launch/pier</li> <li>2) Improvements to the Galloping Goose Trail</li> <li>3) Open/green space</li> <li>4) Sustainability Centre</li> <li>5) Market Assisted Housing</li> <li>6) Fire Hall</li> <li>7) Public Art</li> </ul>	<ul style="list-style-type: none"> <li>a. For provisions 1, 2,3, 4, and 7 compliances with Schedule D of the MDA</li> <li>b. For provision 5 – refer to item 1 above</li> <li>c. For provision 6 – If the City confirms the required, an agreement to build and lease back a fire hall to the City within the first 2 years of development</li> </ul>		
<p><b>21</b></p>	<p>The operating costs of these elements are paid for by the Developer/Development</p>	<p>Maintenance of on-site provisions assured by the Developer/Development in a legally binding manner</p>		
<p><b>22</b></p>	<p>These public realm elements have environmental benefits</p>			

<b>LEED Checklist</b>											
		Certified 26 to 32 points			Silver 33 to 38 points			Gold 39 to 51 points		Platinum 52 or more points	
		Y	P	N	Residential Buildings (All mix types)	Y	P	N	Commercial, light industrial & Office		
		59	5	6	<b>Total Points</b>	53	10	7	Commercial, light industrial & Office		
<b>SS</b>	<b>Sustainable Sites</b>	11	2	1		11	2	1			
Prereq 1	Erosion & Sedimentation Control	Y			This is a standard specification in all our projects. We have developed several sedimentation and erosion control plans and site monitoring checklists to ensure compliance during construction. Aqua-Tex, a leader in erosion and sedimentation control, is on our team.	Y			Same as Residential Comments		
Credit 1	Site Selection	1			This credit will be met by all Proponents. Site does not have the following characteristics: ALR, FLR, lower than 3 feet of the 200 year flood elevation, ecologically sensitive lands, habitat for rare or endangered species, parkland or within 100ft of wetland(as defined by LEED Canada).	1			Same as Residential Comments		
Credit 2	Development Density	1			This credit will be met by all proponents. Master planned communities with existing or planned density of 60,000 sq. ft. per acre on contaminated sites earn this credit based on LEED Canada.	1			Same as Residential Comments		
Credit 3	Brownfield Redevelopment	1			This credit will be earned by all proponents.	1			Same as Residential Comments		
Credit 4.1	Alternative Transportation, Public Transportation Access	1			This credit will be earned based current transit routes. Please refer to our alternative transportation techniques to be provided for the development in the RFP. Further discussions will take place with BC Transit on additional routes.	1			Same as Residential Comments		

Credit 4.2	Alternative Transportation, Bicycle Storage & Changing Rooms	1		We will meet the LEED requirements for residential of 15% bike racks per residential occupancy. This is a standard spec in all our projects. Refer to questionnaire for details.	1		Same comments as residential plus we will provide showers for all industrial, office and commercial uses.
Credit 4.3	Alternative Transportation, Alternative Fuel Refueling Stations	1		We will meet this credit utilizing the following methods acceptable by LEED: A combination of alternative fuel stations, car share programs and providing alternative fuel vehicles.	1		Same as Residential Comments
Credit 4.4	Alternative Transportation, Parking Capacity	1		We will not exceed local zoning parking requirements and will provide the necessary car pooling stalls required by LEED. For residential projects, there is an alternative compliance path by participating in a car share program for 5% of building occupants with vehicles located in or near the buildings. This is outlined in our RFP response.	1		We will not exceed local zoning requirements and will provide the necessary car pooling stalls required by LEED for industrial, commercial and office uses.
Credit 5.1	Reduced Site Disturbance, Protect or Restore Open Space		1	We may meet this credit on some buildings. There is the possibility the total site area that falls outside the building footprints planted with native or adaptive vegetation will exceed 50%. If this is the case this credit maybe earned by all buildings as LEED Canada allows a site wide approach.		1	Same as Residential Comments
Credit 5.2	Reduced Site Disturbance, Development Footprint		1	We will not achieve this credit. There will not be sufficient open space (defined as vegetated and pervious) equal to the building footprints on the site. This can only be achieved through higher buildings with the existing 2:1 density.		1	Same as Residential Comments

Credit 6.1	Storm water Management, Rate and Quantity	1		The site has a site imperviousness of less than 50%. LEED Canada requires the post development 1.5 year 24 hr peak discharge rate will not exceed the predevelopment runoff. Windmill is recognized as a leader in stormwater management and not only earns this credit but qualifies for an innovation points on their projects. We will use a combination of roof storage, green roofs on some of the buildings, rain water collection cisterns, bioswales and biofiltration ponds and perviousness parking surfaces (see page xx of our proposal for details. Refer to Aqua case study on how this credit was earned and also refer to RFP response on our stormwater management plans.	1		Same as Residential Comments
Credit 6.2	Storm water Management, Treatment	1		This credit will be met. TSS will be removed and TP will follow a point source control measure ensuring no TP will be used on site expect for locally injected amts for landscaping. Other strategies will include pervious surfaces, partial green roofs, bioswales and bio-filtration ponds and filters.	1		Same as Residential Comments
Credit 7.1	Landscape & ExtDesign to Reduce Heat Islands, Non-Roof	1		This credit will be met as the majority of parking is underground. However, we will exceed this credit utilizing tree cover to shade hard landscaped areas and roads as well as the use of pervious surface areas.	1		Same as Residential Comments
Credit 7.2	Landscape & ExtDesign to Reduce Heat Islands, Roof		1	A portion of the building will meet the green roof credit but not all. Those buildings that have been slated for green roofs are identified on our plans. This will ensure pleasant views from neighbouring buildings and		1	Same as Residential Comments

					from the air while providing a roof top integration approach for wildlife. The green roof strategy will also include roof top planters and shading from trees planted on the roof over structural columns. LEED Canada approves this approach. See Windmill's Calgary Vento project.				
Credit 8	Light Pollution Reduction	1			The LEED requirements will be met as well as the Hertzberg requirements. This is a standard spec in Windmill projects.	1			Same as Residential Comments
<b>WE</b>	<b>Water Efficiency</b>	5	0	0	Residential Buildings (all mix types)	5	0	0	Commercial, Light Industrial & Office
Credit 1.1	Water Efficient Landscaping, Reduce by 50%	1			This credit will be met. Site landscaping will be native and adaptive plans with and rainwater and treated water for use in irrigation.	1			Same as Residential Comments
Credit 1.2	Water Efficient Landscaping, No Potable Use or No Irrigation	1			No potable water will be used for landscaping as native and adaptive species will be used with emergency backup from rainwater collection system on site. See special features in our RFP response.	1			Same as Residential Comments
Credit 2	Innovative Wastewater Technologies	1			We will meet this credit as we will be treating all sewage on site see special features in our RFP response. Our standard specs for residential buildings results in a 37.4% by using dual flush toilets. We achieved the 50% target in the Vento project in Calgary by reusing rainwater.	1			Same comments as Residential. Our standard project specs for commercial, office and industrial buildings will result in a 42.2% reduction by using dual flush toilets and waterless urinals (CSA approved). To achieve the minimum 50% requirement we will reuse rainwater to flush toilets should the sewage option not be chosen.
Credit 3.1	Water Use Reduction, 20% Reduction	1			This credit will easily be achieved - see next credit.	1			Same as Residential Comments

Credit 3.2	Water Use Reduction, 30% Reduction	1			Our standard spec for residential projects is dual flush toilets, .5gpm lavatories, 1.5gpm showerheads (bricor which work great) and a 1.5 gpm kitchen sink. These specifications generate a 54.2% reduction which also qualifies for LEED innovation point. We will, however, exceed this by using rainwater collection or the blackwater treated water to flush toilets with an estimated 60% reduction. (See Windmill project in Calgary which achieved 61.2% using these specs and rainwater reuse for toilets). We also specific water reducing appliances.	1			We will well exceed the 30% reduction to meet this credit. Our standard spec for commercial projects is dual flush toilets, waterless urinals (CSA approved), .5gpm lavatories, 1.5gpm showerheads (bricor which work great), 1.5 gpm kitchen/janitor sink. This spec generates a 50.3% reduction which also qualifies for LEED innovation point. We will, however, exceed this by using rainwater collection or treated blackwater to flush toilets with an estimated 60% reduction. (See Windmill project in Calgary which achieved 61.2% using this technique in addition to rainwater reuse for toilets).
E&A	Energy & Atmosphere	17	0	0	Residential Buildings (all mix types)	17	0	0	Commercial, Light Industrial & Office
Prere q 1	Fundamental Building Systems Commissioning	Y			We will comply with the prerequisite. This is a standard specification in all our projects.	Y			Same as Residential Comments
Prere q 2	Minimum Energy Performance	Y			We will meet this credit and will well exceed it. LEED Canada requirement for Energy is 90.1 or 11% better than the MNECB which is less than the 25% MNECB requirement for commercial. Our standard spec well exceeds these energy targets.	Y			Same as Residential Comments
Prere q 3	CFC Reduction in HVAC&R Equipment	Y			We will comply with this credit. The Montreal Protocol has outlawed CFC's.	Y			Same as Residential Comments

Credit 1.1 to 1.10	Optimize Energy Performance, 15% New / 5% Existing	10			See discussion of energy strategy in section 2.B.III and special features. We will earn all 10 energy points because of the waste wood to energy system. Energy efficiency is more difficult then commercial buildings.	10			Commercial buildings will also use ground source heat pumps running of the electricity from the wood to waste energy system. All ten points will be earned.
Credit 2.1	Renewable Energy, 5%	1			There will be earned from the wood waste to electrical generation on site. Essentially on electricity on site will be renewable.	1			Same as Residential Comments
Credit 2.2	Renewable Energy, 10%	1			There will be earned from the wood waste to electrical generation on site. Essentially on electricity on site will be renewable.	1			Same as Residential Comments
Credit 2.3	Renewable Energy, 20%	1			There will be earned from the wood waste to electrical generation on site. Essentially on electricity on site will be renewable.	1			Same as Residential Comments
Credit 3	Additional Commissioning	1			We will meet this credit; it is a standard spec in all our projects.	1			Same as Residential Comments
Credit 4	Ozone Depletion	1			We will meet this credit; it is a standard spec in all our projects.	1			Same as Residential Comments
Credit 5	Measurement & Verification	1			We will meet this credit; it is a standard spec in all our projects. It is also part of our TBL reporting on environmental results for our projects.	1			Same as Residential Comments
Credit 6	Green Power	1			We will meet this credit. Because all our electricity is renewable there will be no Green Power Certificates to purchase and may have to buy some to qualify. We are committed to buying Green Power in the event of interruption of wood waste to energy policy to maintain our no GHG policy for the development.	1			Same as Residential Comments
<b>M&amp;R</b>	<b>Materials &amp; Resources</b>	6	3	5	Residential Buildings (all mix types)	6	2	6	Commercial, Light Industrial & Office

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Prereq 1	Storage & Collection of Recyclables	Y			We will meet this credit, it is a standard spec in all our projects.	Y			Same as Residential Comments
Credit 1.1	Building Reuse			1	Not possible for Dockside - not attempting.			1	Same as Residential Comments
Credit 1.2	Building Reuse			1	Not possible for Dockside - not attempting.			1	Same as Residential Comments
Credit 1.3	Building Reuse			1	Not possible for Dockside - not attempting.			1	Same as Residential Comments
Credit 2.1	Construction Waste Management, Divert 50%	1			This credit will be easily met see comments below.	1			This credit will be easily met see comments below.
Credit 2.2	Construction Waste Management, Divert 75%	1			This credit will be met. Our standard specs include a construction waste management plan and biweekly reporting from Contractor. This is an easy credit to meet for Victoria and will be targeting 95% reduction qualifying for LEED innovation credit.	1			Same as Residential Comments
Credit 3.1	Resource Reuse, Specify 5% Salvaged			1	This is unlikely for residential projects. We will attempt to reuse building materials but a 5% level can not be promised.			1	Same as Residential Comments
Credit 3.2	Resource Reuse, Specify 10% Salvaged			1	See above			1	See above
Credit 4.1	Recycled Content, Specify 7.5%	1			We will meet this credit. This is largely met through the use of 35 to 40% fly ash. Fly ash is a standard spec on all Windmill projects. See windmill project in Calgary discussed in Appendix S.	1			Same as Residential Comments
Credit 4.2	Recycled Content, Specify 15%	1			We will meet this credit. This will largely be met through the use of 35 to 40% fly ash and use of metals. Other recycled components include terrazzo, steel, rebar, aluminium, fiberglass, paints, carpet backing, etc. We can provide backup calculations on fly ash to show compliance	1			Same as Residential Comments

					with credit on other windmill projects if requested.				
Credit 5.1	Regional Materials, 10% Extracted and Manufactured Regionally	1			We will meet this credit. Easily achieved by using cement, wood and native landscaping and compost in projects.	1			Same as Residential Comments
Credit 5.2	Regional Materials, 20% Extracted and Manufactured Regionally		1		Although, we believe we will meet this credit, however, further investigation is done. The use of concrete, wood, compost, native landscaping and our plans to support local business such result in this approach being met. However, there is a fair amt of steel and metal used.		1		Same as Residential Comments
Credit 6	Rapidly Renewable Materials		1		Our standard spec is wool carpets, bamboo flooring, compressed wheat board substrates for kitchen cabinets, linoleum with some aspen for mill work. However, even with this material the credit requirement is difficult to achieve but will be achieved and is will likely not be met. However, we may want to not go after this credit if we can get more FSC wood supply to support local wood industry instead of bamboo.			1	This credit is more difficult for commercial buildings and cannot commit to compliance.
Credit 7	Certified Wood		1		We will be targeting this credit working with the eco-lumber store and other plans with respect to FSC as discussed in our RFP response. We cannot yet commit to this credit as these plans are not yet finalized.		1		Same as Residential Comments with the exception that the sustainability center
Credit 8	Durable Building	1			We will meet this credit. It is standard spec in our projects and not difficult to achieve.	1			Same as Residential Comments
<b>IEQ</b>	<b>Indoor Environmental Quality</b>	15	0	0	Residential Buildings (all mix types)	9	6	0	Commercial, Light Industrial & Office

Prere q 1	Minimum IAQ Performance	Y			We will meet this credit and is easily met.	Y			Same as Residential Comments
Prere q 2	Environmental Tobacco Smoke (ETS) Control	Y			We will meet this credit. We use option 3 for compliance. This prerequisite has caused developer concern because of the requirement for weather stripping the doors to common areas. This doesn't work where the main air supply system is from the corridor to the suites. We are not concerned with this issue as we duct air directly to suites using central or individual HRV systems. The standard developer approach results in a stack effect and very poor air quality and is not consistent with Green Building principals.	Y			For Commercial this credit is met as smoking is not permitted in commercial buildings.
Credit 1	Carbon Dioxide (CO2) Monitoring	1			We will commit to this. The protocol for Residential buildings is to test for indoor air contaminants levels for formaldehyde and volatile organic compounds prior to occupancy. These levels will be achieved as we do not use urea-formaldehyde products (we use medite II, compressed wheat board in our substrates and low or no VOC in our paints, sealant and adhesives		1		The majority of commercial applications such office will meet this credit but some of the smaller commercial spaces may not as smaller systems will likely be individual HRV systems which often are not CO2 adjustable.
Credit 2	Increase Ventilation Effectiveness	1			We will meet this credit as LEED residential requirement for residential is to duct air directly to residential units and then distributed to occupied areas with the suite. This is through individual HRV units (lower or centralized HRV systems).		1		This credit will likely be met for office buildings with the exception of retail and light industrial spaces. It is difficult to achieve in retail buildings because generally to meet this requirement under floor or displacement ventilation

									systems are required which are not suitable in retail applications because of tenant turnover.
Credit 3.1	Construction IAQ Management Plan, During Construction	1			We will meet this credit and is part of our standard specs. We have developed a base IAQ plan for residential projects which is modified from building to building.	1			Same as Residential Comments
Credit 3.2	Construction IAQ Management Plan, Before Occupancy	1			We will meet this credit and will perform IAQ test or flush out before occupancy.	1			Same as Residential Comments
Credit 4.1	Low-Emitting Materials, Adhesives & Sealants	1			We will meet this credit it is part of our standard spec.	1			Same as Residential Comments
Credit 4.2	Low-Emitting Materials, Paints	1			We will meet this credit it is part of our standard spec. We focus on no or low VOC paints.	1			Same as Residential Comments
Credit 4.3	Low-Emitting Materials, Carpet	1			We will meet this credit, it is part of our standard spec.	1			Same as Residential Comments
Credit 4.4	Low-Emitting Materials, Composite Wood and Laminate Adhesives	1			We will meet this credit; it is part of our standard spec. This takes a great deal of work because kitchen cabinets need to use compress wheat board which often means educating local trades like what was done in Calgary. Also interior wood doors need to go to finger joint doors as standard hollow core doors have urea formaldehyde glue. Also millwork needs to use medite II.	1			Same as Residential Comments
Credit 5	Indoor Chemical & Pollutant Source Control	1			We will meet this credit with entrance grills and other requirements. Merv 13 requirements are not applicable to residential buildings as 100% fresh air systems are used.		1		We will meet this credit for commercial buildings with outdoor grates and other requirements. Merv 13 requirements maybe an issue in some of the

								smaller commercial buildings with recirculation air as small systems don't have MERV 13 filters which may result in credit not being possible for smaller buildings.
Credit 6.1	Controllability of Systems, Perimeter	1			We will meet this credit for residential buildings with opening windows for all regularly occupied spaces with 15 feet of perimeter. For residential buildings, the window per 200 sq. ft. requirement is usually well exceeded because of the nature of residential spaces. Lighting controls are also easily met.		1	We will meet this credit for office buildings with one opening window and lighting control per 200 sq. ft. for all regularly occupied space within 15 ft. Commercial spaces will also be designed to these criteria but may be difficult where loading is from the rear of the buildings making opening windows more difficult. However, this is a design consideration that can be overcome.
Credit 6.2	Controllability of Systems, Non-Perimeter	1			We will meet this requirement for residential buildings as typically there are no non-perimeter regularly areas in residential suites. There may be non-perimeter dens but this credit can be accomplished through controllable air vents to dens and lighting controls.		1	We will meet this credit for office buildings with raised floors but maybe difficult for majority of retail buildings, however, as these are often classified as multi-occupancy tenancy spaces the credit can be achieved using the LEED strategies for multi-occupancy space with temperature, 3 lighting controls and 1 air control per 2,500 sq. ft. of retail.

Credit 7.1	Thermal Comfort, Comply with ASHRAE 55-1992	1			We comply with this credit. The new ASHRAE 55-2004 uses thermal comfort ranges rather than individual temperature and humidity ranges. This will also use to meet these credits particularly in Victoria where humidity is not an issue.	1			Same as Residential
Credit 7.2	Thermal Comfort, Permanent Monitoring System	1			We will meet this credit with temperature monitoring system for Residential units; humidity monitoring will not be required for Dockside because of Victoria's climate.	1			Same as Residential
Credit 8.1	Daylight & Views, Daylight 75% of Spaces	1			We will likely meet this credit for residential as providing daylighting is not an issue with residential design.		1		We will meet this credit for office space but it may be more difficult for retail because of the depth of bays (loading at rear) and skylights will generally not be used as there will be occupied space above the residential.
Credit 8.2	Daylight & Views, Views for 90% of Spaces	1			We will meet this credit for residential which is not a problem with residential unit design as all regularly occupied rooms will have views to the outside.	1			We will meet this credit for all office and retail space.
<b>ID</b>	<b>Innovation &amp; Design Process</b>	5	0	0	Residential Buildings (all mix types)	5	0	0	Commercial, Light Industrial & Office
Credit 1.1	Innovation in Design:	1			We will earn an innovation credit by well exceeding WE3 by 40%.	1			Same as residential
Credit 1.2	Innovation in Design: Specific Title	1			We will earn an innovation credit for our education program which provides education document to tenants, signage, web info and other educational products on the green attributes of buildings.	1			Same as Residential Buildings.
Credit 1.3	Innovation in Design: Specific Title	1			We will earn an innovation credit for our Green Housing Keeping plan. We will provide a maintenance plan and provide each purchaser	1			Same as Residential Buildings.

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					with a 6 month supply of green cleaning products for 6 different cleaning functions.				
Credit 1.4	Innovation in Design: Specific Title	1			We will earn this credit for recycling 95% of construction waste. Note that we will have other Innovation credits for Storm water reduction, GHG and other strategies. Earning 4 innovation credits will not be a problem for this project	1			Same as Residential Buildings.
Credit 2	LEED™ Accredited Professional	1			We will earn this credit we have as the developers have two LEED accredited professionals and one LEED faculty member.	1			Same as Residential
	70	5 4	7	9		51	9	10	
	real possibility				Some buildings will meet this requirement				

## **SCHEDULE K**

### **UTILITIES**

#### **Bio Mass Energy Co-Generation for the Dockside Project**

A Bio Mass Energy Co-Generation will generate heat for Dockside and will create electricity equal to or greater than that needed for the Development.

The Developer has a commitment to be Green House Gas (“**GHG**”) neutral for providing heat to the development.

Wood waste will be the primary biomass energy producer. Wood waste is available from mills, wood working shops, and the tree trimming and deadfall in the CRD.

The engines and plant will be housed in an acoustically isolated building to avoid disturbances. The engines will produce green electrical energy with a generator and heat from the engine block and flue gasses. These flue gasses are clean and odourless.

The Bio Mass project would consist of the following major elements:

- Wood handling and storage facility,
- Rotary dryer for occasional wet wood,
- Digester to convert the wood to BioGas,
- Scrubber and dryer to clean BioGas,
- 2 to 3 -1 MW heavy duty reciprocating engine and generator,
- Heat recovery devices from engine jacket and exhaust heat,
- District heating piping systems,
- Electrical power connections to the BC Hydro grid.

The wood handling systems will consist of:

- Truck and/or barge access to the site to handle the volume of wood needed,
- Various conveyors and/or loaders to transport the wood,
- Covered wood storage facility,
- Digester waste handling,
- Gas scrubber liquid waste will go to sewage treatment plant on site.

## Sewage Treatment for Dockside

All sewage will be treated on site, except as otherwise contemplated in this Agreement.

### How it works

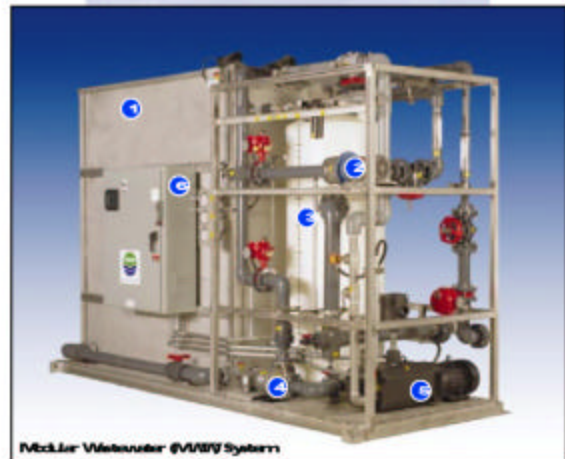
The treatment system will utilize bioreactor tanks and ultra-filter membranes to treat all of the sewage on site to almost drinking water quality. The water quality will be cleaner than the following characteristics: <3 mg/l BOD, <3 mg/l TSS, and ammonia nitrogen <1 mg/l. This water treatment will be followed up by activated charcoal and UV filters. This water quality far exceeds any of the outfall requirements of the Ministry of the Environment. With some minor additional treatment like chlorination, this sewage treatment process will generate drinking water quality for areas such as Singapore.

The system we are using is similar to the Pittsburgh Convention Centre, a LEED Gold building, but we propose that new compact packaged units manufacture by Canadian-based Zenon be used. Zenon's system uses ZeeWeed™ membrane with the Modular Wastewater (MWW) membrane bioreactor system. The packaged, modular units will provide redundancy so full operation and reliability will continue during any maintenance work.

Initially 2@ MWW-8 units (95,000 l/day ea) would be used. One unit can handle about 40% of the full development.

With 2 units, one can operate while there is periodic maintenance of the other. The full build out would require 3 of these modular units. The units would be housed in a building on site.

In emergency situations the tank could be pumped out to the main trunk line.



The tank would provide a buffer volume if there were any surge flows or if the system was down. Again as an emergency back up, you could always pump out the tank into trucks. At 1,320 wide, 3800 long, and 2300 high the full system would require a building with approximate dimensions of 14m x 8m (1,205 sq. ft).

The treated water is superior to the water from the treatment plant. One of the reasons we are so interested in treating the sewage on site is to make it available to water landscaped areas in our creek and pond features.

The system will be managed on site as a utility for the development and will not be a responsibility for the Municipality. It will either be part of the utility common or common amenity for the development.

## SCHEDULE L

### RESTRICTIVE COVENANT

#### TERMS OF INSTRUMENT – PART 2

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#### W H E R E A S:

A. The Grantor is the registered owner in fee simple of:

PID 017-941-911

Lot 8, Plan VIP53097, District Lot 119, Esquimalt District

PID 024-236-462

Lot G, Plan VIP67690, District Lot 119, Esquimalt District

PID 023-149-779

Lot 1, Plan VIP61709, District Lot 119, Esquimalt District, Except that part in Plan VIP66539

PID 024-236-446

Lot E, Plan VIP67690, District Lot 119, Esquimalt District

PID 018-375-405

Lot A, Plan VIP56972, District Lot 119, Esquimalt District

PID 024-236-438

Lot D, Plan VIP67690, District Lot 119, Esquimalt District

PID 017-941-865

Lot 4, Plan VIP53097, District Lot 119, Esquimalt District

PID 024-236-454

Lot F, District Lot 119, Esquimalt District, Plan VIP67690

PID 024-011-061

Lot A, District Lot 119, Esquimalt District, Plan VIP66539

PID 023-149-787

Lot 2, District Lot 119, Esquimalt District, Plan VIP61709

(collectively, the "**Grantor's Lands**");

B. The Grantor and the Grantee are parties to a Master Development Agreement made as of September 7, 2005 (the "**MDA**") respecting the development of the Grantor's Lands, a copy of which is attached as Schedule A to this Agreement;

- C. Under the terms of the MDA, the Grantor has undertaken to provide certain amenities and services in respect of the Grantor's Lands, and in connection with the development of the Grantor's Lands, has agreed to provide the Grantee with a restrictive covenant pursuant to section 219 of the *Land Title Act* to secure the Grantor's obligations with respect to the development of the Grantor's Lands under the MDA, and with a Statutory Right of Way pursuant to section 218 of the *Land Title Act* for the purposes described in this Agreement (which Statutory Right of Way is necessary for the Grantee's undertaking of the provision of Public Amenities).

**NOW THEREFORE** in consideration of the premises and the mutual covenants and agreements contained herein, and the sum of \$1.00 of lawful money of Canada now paid to the Grantor (the receipt and sufficiency of which is hereby acknowledged), the parties covenant and agree with the other as follows:

1. The Grantor covenants and agrees that any development of the Grantor's Lands shall occur in accordance with the terms and conditions of the MDA, which terms and conditions are incorporated into and form part of this Agreement.
2. Without limiting the generality of section 1, the Grantor covenants and agrees that:
  - (a) the Grantor shall not make, place, erect, construct, or occupy or permit to be made, placed, erected, constructed, or occupied, any improvement, development, building or facility upon the Grantor's Lands;
  - (b) the Grantor shall not make any application for subdivision of the Grantor's Lands;
  - © the Grantee shall be under no obligation to issue a Development Permit or Building Permit for any proposed improvement, development, building or facility upon the Grantor's Lands;
  - (d) the Grantee shall be under no obligation to issue an Occupancy Permit for any building constructed upon the Grantor's Lands; and
  - (e) the Grantor shall take no action, directly or indirectly, to compel the approval of any subdivision plan, or to compel the issuance of a Building or Development Permit, or Occupancy Permit, in respect of any improvement, development, building or facility upon the Grantor's Lands;

unless in respect of such improvement, development, building, facility, or any application for subdivision approval, or for a Development Permit, Building Permit or Occupancy Permit, the Grantor fully complies with the requirements of the MDA applicable to such improvement, development, building, facility or subdivision, as the case may be.

3. Further without limiting the generality of section 1.0 or section 2.0 of this Agreement, the Grantee covenants and agrees as follows:
  - (a) that the Grantor shall not convey, transfer, dispose of, occupy or permit the occupation of, the Sustainability Centre referred to in Schedule G of the MDA, unless it has first registered in favour of the Grantee a restrictive covenant pursuant to section 219 of the *Land Title Act*, the terms of which must be acceptable to the Grantee, against title to the Lot on which the Sustainability Centre is located, requiring the operation of the Sustainability Centre in perpetuity, in accordance with the requirements of the MDA;
  - (b) that prior to the issuance of an occupancy permit for any building on the Grantor's Lands, the Grantor shall execute and deliver to the Grantee a restrictive covenant pursuant to section 219 of the *Land Title Act* as to the matters set out in sections 17.2(b) and (c) of the MDA; and
  - (c) that prior to the sale of any portion of the Grantor's Lands (other than the sale of individual strata lots, the Grantor shall execute and deliver to the Grantee such further restrictive covenant pursuant to section 219 of the *Land Title Act* that the Grantee may require as to the requirements of section 11.5 of the MDA.
4. At the Grantor's expense, the Grantor must do everything necessary to secure priority of registration and interest for this Agreement and the section 219 Covenant it creates over all registered and pending charges and encumbrances of a financial nature against the Grantor's Lands.
5. The Grantor further grants to the Grantee a statutory right of way pursuant to section 218 of the *Land Title Act* to enter upon the Grantor's Lands and carry out the construction of Public Amenities in accordance with the provisions of section 8.9 of the MDA.
6. Nothing contained or implied herein shall prejudice or affect the rights and powers of the Grantee in the exercise of its functions under any public or private statutes, bylaws, orders and regulations, all of which may be fully and effectively exercised in relation to the Grantor's Lands as if the Agreement had not been executed and delivered by the Grantor.
7. Time is of the essence of this Agreement.
8. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, grantors, administrators, executors, successors, and permitted assigns.
9. The waiver by a party of any failure on the part of the other party to perform in accordance with any of the terms or conditions of this Agreement is not to be

construed as a waiver of any future or continuing failure, whether similar or dissimilar.

10. Wherever the singular, masculine and neuter are used throughout this Agreement, the same is to be construed as meaning the plural or the feminine or the body corporate or politic as the context so requires.
11. No remedy under this Agreement is to be deemed exclusive but will, where possible, be cumulative with all other remedies at law or in equity.
12. This Agreement shall be construed in accordance with and governed by the laws applicable in the Province of British Columbia.
13. The Grantor from time to time hereunder shall not be liable for any breach of this Agreement which occurs after such person has ceased to be an owner of the Grantor's Lands.

**IN WITNESS WHEREOF** the parties hereto hereby acknowledge that this Agreement has been duly executed and delivered by the parties executing Form C (pages 1 and 2) attached hereto.

**SCHEDULE M**

**PARAMETERS FOR INTEGRATED PEST MANAGEMENT PLAN**

**SCHEDULE N**

**CITY AUDIT CRITERIA**

**[Note: To be inserted in due course.]**

**SCHEDULE O**  
**ADAPTABLE HOUSING POLICY**