Schedule 00 - Phased Development Agreement

PHASED DEVELOPMENT AGREEMENT

THIS AGREEMENT made this _____ day of _____, 20_____,

BETWEEN:

DISTRICT OF LAKE COUNTRY, a municipal corporation pursuant to the *Local Government Act*, RSBC 2015, c. 1, with an address at 10150 Bottom Wood Lake Road, Lake Country, BC V4V 2M1

(the “**District**”)

AND:

MACDONALD LAKESHORE PROPERTIES LTD., a corporation incorporated pursuant to the laws of British Columbia, with an address at 1100-938 Howe Street, Vancouver, BC V6Z 1N9

(the “**Developer**”)

1.1 WHEREAS:

A. The Developer is the registered owner in fee simple of the Lands, which are located in the District of Lake Country, British Columbia and shown in Schedule 2.1 to this Agreement;

B. In 2007, section 219 covenants in favour of the District were registered on title to the Lands that attached a “Master Plan” document to it. On May 8, 2012, Council for the District approved amendments to the Master Plan which were registered on title to the Lands through new section 219 covenants, replacing the original covenants;

C. The “Lakestone Master Plan 2012” summarized the parties’ vision for the Proposed Development;

D. The Developer has completed certain phases of the Proposed Development known as Lakestone, and wishes to proceed with the final phases of the Proposed Development. To date, development of the plan has progressed over three completed phases (Waterside, Benchlands, Highlands North), and one phase in progress at the time of this Phased Development Agreement (PDA) being ratified (Summit);

E. The District will bring forward bylaw amendments to Council recommending the removal of all references to the Masterplan in the Zoning Bylaw and OCP with the proposed Phased Development Agreement Bylaw;

F. The Developer wishes to provide the Required Services and Amenities as defined herein;

G. The Developer wishes to ensure that the Specified Provisions apply to the Lands for the Term;

H. Section 516 of the *Local Government Act* permits this Agreement pursuant to the *Phased Development Agreement Bylaw*; and

I. The Parties have agreed to register this Agreement in the Land Title Office under Section 219

of the *Land Title Act*.

NOW THEREFORE in consideration of the mutual covenants and agreements set out in this Agreement, the Parties covenant and agree as follows:

1.2 PART 1 – INTERPRETATION

1.1 In this Agreement:

“**Agreement**” means this Phased Development Agreement;

"**Amenities**" includes the community benefits shown in Schedules 9 that the Developer will provide to the District;

“**Approving Officer**” means the subdivision approval official appointed by the District for that purpose under the *Land Title Act*;

“Council” means the municipal council of the District of Lake Country;

“DCC” means a Development Cost Charge levied under the *DCC Bylaw*;

“*DCC Bylaw”* means the District of Lake Country *Development Cost Charge Bylaw* No. 950, 2016;

“District Engineer” means the person appointed as such by the District from time to time, and their delegates;

“**Glenmore Residential**” means the phase of the Proposed Development approximately as shown on the Phasing Plan and as described in section 2.2 of Schedule 2;

“**Highlands Central**” means the phase of the Proposed Development approximately as shown on the Phasing Plan and as described in section 2.2 of Schedule 2;

“**Highlands East**” means the phase of the Proposed Development approximately as shown on the Phasing Plan and as described in section 2.2 of Schedule 2;

“**Highlands East (partial)**” means the phase of the Proposed Development approximately as shown on the Phasing Plan and as described in section 2.2 of Schedule 2;

“**Highlands South**” means the phase of the Proposed Development approximately as shown on the Phasing Plan and as described in section 2.2 of Schedule 2;

“**Highlands West**” means the phase of the Proposed Development approximately as shown on the Phasing Plan and as described in section 2.2 of Schedule 2;

“**Lands**” means the parcels of land legally described in Schedule 2.1;

“Lakestone Emergency Access Road” means the private gravel road connecting Beacon Hill

Drive to Chase Road on the undeveloped portion of the Lands and as described in detail in Schedule 5.1;

“Minor Amendment” has the meaning described in section 3.6 “Minor Amendment”;

“*OCP*” means the District of Lake Country *Official Community Plan (2018-2038) Bylaw* No. 1065, 2018;

“**Parks**” means the parks, greenways, trails, and other open space areas shown as such on the Parks Plan attached as Schedule 9;

“**Party**” or “**Parties**” means a party or parties to this Agreement;

"**Phase**" means a phase of the Proposed Development, including all Services and Amenities contemplated or required in connection with that Phase, as depicted in Schedule 2 and “**Phases**” means more than one Phase;

“***Phased Development Agreement Bylaw***” means the bylaw authorizing this Agreement pursuant to section 516(1) of the *Local Government Act* and attached as Schedule 12;

"Phasing Plan” means the phasing plan, as shown in Schedule 2 at appendix 02.01.01;

“PLR” means preliminary layout review;

“Proposed Development” means the Developer’s proposal to develop the Lands for residential, service, commercial, and recreational uses, as set out in this Agreement, the *OCP,* and the *Zoning Bylaw*;

“**Required Services and Amenities”** include certain Services and Amenities in the Proposed Development, as described and detailed in Schedules 2, 5 and 9;

“**Servicing Bylaw**” means the District of Lake Country *Subdivision and Development Servicing Bylaw* No. 1121, 2020, as amended and in place on the adoption date of the *Phased Development Agreement Bylaw* and stated in Schedule 6;

"**Specified Provisions**" has the meaning ascribed thereto in section 2.2.1;

“**Subdivide**” “**Subdivided**” or “**Subdivision**” means to divide, apportion, or subdivide the Lands or portion thereof, or the ownership or right to possession or occupation of the Lands into two or more lots, strata lots, parcels, parts, portions, or shares, whether by plan, descriptive words or otherwise, under the *Land Title Act*, the *Strata Property Act*, or otherwise, and includes the creation, conversion, organization, or development of "cooperative interests" or "shared interest in land" as defined in the *Real Estate Development Marketing Act*;

“Term” means the term of this Agreement set out in section 2.3.1;

“**Trail”** or **“Trails**” means the multi-use public trails system described in Schedule 9;

“**Works and Services”** means infrastructure and services and includes highways, sidewalks, boulevard, boulevard crossings, transit bays, street lighting, wiring, water distribution systems, walkways, roads, sewage collection and disposal systems, drainage collection and disposal systems, paving, curbs and gutters, and such other infrastructure,

systems and any other improvements required to be constructed, erected, or installed, both onsite and offsite as described in the *Servicing Bylaw* and this agreement that the Developer will build and dedicate to the District; and

“*Zoning Bylaw*” means the District of Lake Country *Zoning Bylaw* No. 561, 2007 as amended and in place on the adoption date of the *Phased Development Agreement Bylaw*.

1.2 Headings and captions in this Agreement are for convenience only and do not form part of the Agreement. They will not be used to interpret, define, or limit the scope, extent, or intent of this Agreement and its provisions.

1.3 The word "including" when following any general term or statement will not be construed as limiting it to the specific items following it, or to similar terms or matters, but rather, as permitting it to include other items or matters that could reasonably fall within its scope.

1.4 A reference to a statute includes every regulation made pursuant thereto and all amendments to the statute or to any such regulation in force from time to time, and any statute or regulation that supplements or supersedes such statute or any such regulation.

1.5 A reference to a bylaw means a District bylaw, and unless specified to the contrary, includes all amendments in force from time to time, and any bylaw that supplements or supersedes it.

1.6 A reference to time or date is to the local time or date in Lake Country, British Columbia.

1.7 A reference to approval, authorization, consent, designation, waiver, or notice means written approval, authorization, consent, designation, waiver, or notice.

1.8 A reference to a section means a section of this Agreement unless a specific reference is provided to a statute or bylaw.

1.9 A reference to a Schedule means a schedule attached to this Agreement, unless a specific reference is provided to another enactment, instrument, or other document.

1.10 Wherever the singular, masculine, or personal form of a word is used throughout this Agreement, the same is to be construed as meaning the plural, the feminine or gender neutral, or the body corporate or politic as the context so requires.

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

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

Schedule “00” - Phased Development Agreement

Schedule “1” – How to use this PDA

Schedule “2” - Phasing Plan

Schedule “3” - *Zoning Bylaw* Provisions

Schedule “4” - Environmental Wildfire Geotech and Safety Policy

Schedule “5” - Interim Access and Egress Conditions

Schedule “6” - *Servicing Bylaw*

Schedule “7” - Civil Infrastructure

Schedule “8” – Lakestone specific Standards

Schedule “9” - Amenities and Parks

Schedule “10” - Servicing capacity ownership

PART 2 – AGREEMENT PARAMETERS

2.1 APPLICATION

2.1.1.1 This Agreement applies to the Lands, including any parcels into which the Lands are Subdivided.

2.1.2 The Developer covenants and agrees with the District that the Lands will not be developed, Subdivided, or built on for any purpose whatsoever, except in strict accordance with this Agreement.

2.2 BYLAW AMENDMENTS

2.2.1 For the purposes of this Agreement, the “Specified Provisions” are as follows:

(a) all provisions of the *Zoning Bylaw* (including but not limited to section 19.3) applicable to the Lands as of the date of this Agreement, as set out in Schedule 3 to this Agreement; and

(b) all provisions of the *Servicing Bylaw* applicable to the Lands as of the date of this Agreement, as set out in Schedule 6 to this Agreement

(collectively, the “**Specified Provisions**”).

2.2.2 For the duration of the Term, no amendment or repeal of the Specified Provisions within the *Zoning Bylaw* or the *Servicing Bylaw* applies to the Lands, except:

(a) as provided in section 516(6) of the *Local Government Act;*

(b) as provided in any other provision of the Local Government Act or another statutory enactment in force and binding on the Parties from time to time; or

(c) to the extent that the Developer agrees in writing that the amendment or repeal applies to the Lands.

2.2.3 For certainty, and without limiting section 2.2.1, the District agrees that any amendment or repeal of the Specified Provisions that would prevent the issuance of any development approval, development permit, or building permit in respect of the Lands, the issuance of which was not prevented by the Specified Provisions, will not operate to prevent issuing such approval or permit for the Term.

2.2.4 If future legislative amendments permit changes to the Proposed Development that the Developer seeks to implement, for example, greater density than is currently contemplated in this Agreement, the Developer acknowledges and agrees that the Proposed Development must satisfy additional infrastructure requirements, if any, and must provide updated Transportation and Water, Sewer, and Drainage Plans if reasonably required by the District.

3 2.3 TERM AND TERMINATION OF AGREEMENT

2.3.1 The Term of this agreement twenty (20) years from the adoption date of the *Phased Development Agreement Bylaw*.

2.3.2 The Parties may terminate this Agreement at any time by mutual written agreement, subject to section 6.4.

2.3.3 If, in the District’s opinion, the Required Services and Amenities have not materially been provided to the standards and at the times set out in this Agreement the District may give written notice to the Developer (the “**Default Notice**”), that there has been an alleged material failure to provide the Required Services and Amenities in accordance with this Agreement and setting out the nature of the default (the “**Deficiency**”).

2.3.4 If the Developer has not substantially remedied the Deficiency to the reasonable satisfaction of the District within one (1) month after receipt of the Default Notice, or, where the Deficiency reasonably requires longer than one (1) month to remedy, the Developer has failed to substantially commence remedying to the reasonable satisfaction of the District the Deficiency within one (1) month after receipt of the Default Notice, or has failed to substantially remedy the Deficiency to the reasonable satisfaction of the District within the period of time after receipt of the Default Notice reasonably necessary to complete the remedial work, then the District is entitled to terminate this Agreement by further written notice without prejudice to any other rights or remedies that the District may have at law or in equity. For clarity, the Developer will be considered to have commenced remedial efforts where it has commenced investigation and planning work (including drawings, design, etc.) in furtherance of the required remedial work.

2.3.5 Upon expiry or earlier termination of this Agreement, the District is no longer bound by section 2.2.2 and any amendment or repeal of the Specified Provisions during the Term applies to the Lands.

PART 3 – DEVELOPMENT

3.1 THE DEVELOPMENT

3.1.1 The Proposed Development is subject to the terms and conditions of this Agreement.

3.1.2 Subject to section 2.2.1, the Developer will develop the Lands for the Proposed Development in accordance with all District bylaws, and without limiting the foregoing, in accordance with the schedules referenced in section 1.12.

3.1.3 If there is any conflict between the bylaws and any of the Schedules included in this agreement, the Schedules prevail. If the Schedules do not provide direction the bylaws shall be applicable.

3.1.4 For clarity, the inclusion of the Specified Provisions and the Schedules in this Agreement

does not abrogate the District’s right to request updated reports as needed throughout the development process.

3.1.5 Intentionally left blank

3.1.6 For certainty, the Developer’s obligation to provide the Required Services and Amenities includes the obligation to transfer to the District certain interests in the Lands on the terms set out in this Agreement, and any improvements thereon, that are reasonably required to ensure the District’s ongoing right, title, and interest in and to the Required Services and Amenities and to their use by the District and the public (where applicable).

3.2 PUBLIC LANDS USE DESIGNATIONS

3.2.1 The Developer acknowledges that the Specified Provisions zone certain portions of the Lands for public use only, in contemplation of those portions being transferred to the District pursuant to this Agreement, and agrees that such designations do not, considered together with the effect of the Specified Provisions in respect of the other portions of the Lands, effect any reduction in the value of the Developer’s interest in the Lands. The Developer agrees that such designations and providing the Required Services and Amenities do not entitle the Developer to any compensation whatsoever from the District. The Developer irrevocably waives any entitlement to such compensation and the right to challenge validity of the Specified Provisions that zone certain portions of the Lands for public use only.

3.3 PHASING REQUIREMENTS

3.3.1 The Developer covenants and agrees with the District to provide the Required Services and Amenities as set out in the Schedules.

3.3.2 Though not a requirement, for planning purposes, as of the date of this Agreement, the most likely sequence of the Proposed Development is:

(a) Highlands East (partial);
(b) Highlands Central;
(c) Highlands South including the Key infrastructure item Schedule 7.1.1 (Southern Access);
(d) remainder of Highlands East;
(e) Highlands West; and
(f) Remainder of Highlands South

For clarity, the development of the Glenmore Residential phase does not require the prior development of other areas or phases of the Proposed Development, such that the Glenmore Residential phase could be developed at any time and independently (whether concurrently or sequentially) of the other phases.

3.4 SERVICING

3.4.1 As the Lands will be serviced by the District’s sanitary sewer, storm and water services and accessed by District’s highways, the Developer covenants and agrees with the District that it will, at its own cost, design and construct all Works and Services required

for each Phase to service all development on the Lands to standards acceptable to the District and that comply with its bylaws, including the *Servicing Bylaw*.

3.4.2 The Developer will have the right to all capacity of water, sewer and storm infrastructure Works and Services it is constructing as part of the Development unless explicitly noted otherwise in this Agreement. Ownership of the capacity will be regulated via the concept described in Schedule 10.

3.5 ASSIGNMENT OF AGREEMENT

3.5.1 The Developer may assign this Agreement in whole or in part to a subsequent owner of the Lands, provided that:

(a) the subsequent owner is a corporation which is a subsidiary of the Developer within the meaning of the *Business Corporations Act*; or

(b) to any other person or corporation if the District agrees to the assignment.

3.5.2 The District’s Agreement to an assignment under Section 3.5.1(b) will not be unreasonably withheld or delayed where the person or corporation receiving the assignment is:

(a) in the case of a corporation, duly registered in the Province of British Columbia or Canada and is in good standing with the applicable corporate registrar;

(b) not the subject of bankruptcy or insolvency proceedings; and

(c) in the business of land development.

3.5.3 Prior to any assignment of this Agreement, whether in whole or in part, the subsequent owner or owners must enter into an agreement with the District in a form satisfactory to the District (acting reasonably) whereby the subsequent owner(s) assumes all of the Developer’s covenants, agreements, and other obligations under this Agreement.

3.5.4 Notwithstanding sections 3.5.1 through 3.5.3, the District’s consent is not required for the Developer completing the sale of single-family residential lots created in accordance with this Agreement.

3.6 AMENDMENTS

3.6.1 No amendment to this Agreement will be effective unless made in writing and duly executed by the Developer and the District.

3.6.2 The District and the Developer may agree to Minor Amendments of this Agreement. For the purposes of this Agreement, a **“Minor Amendment”** is any amendment other than one that:

(a) contemplates renewal or extension of this Agreement;

(b) modifies the Lands that are the subject of this Agreement (Schedule “2.1”);

(c) modifies the definition of Specified Provisions (section 2.2.1);

(d) modifies the Term of this Agreement, unless the amendment will reduce the length of the Term (section 2.3.1);

(e) modifies the definition of Minor Amendment (section 3.6.2); or

(f) modifies the provisions of this Agreement regarding assignment to a subsequent owner (section 3.5).

3.6.3 The District may authorize a Minor Amendment by Council resolution without having to adopt a bylaw or hold a public hearing.

3.6.4 At Council’s discretion, the District may convene a public hearing or other proceeding to consider public opinion regarding the proposed Minor Amendment, notwithstanding that it is not required by any enactment. If Council convenes a public hearing, the Developer agrees to participate in such hearing or other proceeding for the purpose of providing information to the public on the proposed Minor Amendment.

3.6.5 A public hearing and adoption of a bylaw is required as a precondition to an amendment to this Agreement that is not a Minor Amendment.

3.6.6 The Developer and the District will meet on the two, five, ten, and fifteen year anniversary of this Agreement’s ratification to consider if any amendments to this Agreement or related procedures are mutually desired.

PART 4 – DISPUTE RESOLUTION

4.1 DISPUTE RESOLUTION

4.1.1 If a dispute arises between the parties in connection with this Agreement, the parties agree to first use the following procedure prior to pursuing any other remedies:

(a) either Party will notify the other by written notice (“**Notice of Dispute**”) of the existence of a dispute;

(b) promptly, a meeting will be held between the Parties and attended by the individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution; and

(c) if, within forty-eight (48) hours after such meeting or such further period mutually agreed to by the Parties (the “**Negotiation Period**”), the Parties have not succeeded in negotiating a resolution, the Parties will proceed in accordance with sections 4.1.2 or 4.1.3, as applicable.

4.1.2 If a dispute relates to technical standards pursuant to a bylaw, and was not successfully resolved during the Negotiation Period:

(a) the Parties must, within fourteen (14) business days of the conclusion of the Negotiation Period, jointly appoint a mutually acceptable third party who is an

expert in the subject matter of the dispute to provide their non-binding opinion and recommendations for resolution of the dispute, which the Parties will consider and use in further good faith dispute resolution negotiations, with the costs of the opinion to be borne mutually by the Parties; and

(b) if the dispute is not resolved pursuant to section 4.1.2(a):

(i) either Party may pursue recourse through BC courts;

(ii) if the Parties mutually agree, they may proceed with and bear equally the costs of mediation, in which case the Parties will jointly appoint a mutually acceptable mediator (preferably an expert in the subject matter of the dispute) and secure mediation dates within fourteen (14) business days of agreeing to mediation; or

(iii) if the Parties mutually agree, the dispute may be settled by a single arbitrator under the *Arbitration Act*, SBC 2020, c. 2**.**

4.1.3 If a dispute relates to interpretation of this Agreement, or anything else arising in connection with this Agreement, and has not been resolved pursuant to section 4.1.1 and section 4.1.2 does not apply:

(a) either Party may pursue recourse through BC courts;

(b) if the Parties mutually agree, they may proceed with and bear equally the costs of mediation, in which case the Parties will jointly appoint a mutually acceptable mediator (preferably an expert in the subject matter of the dispute), within fourteen (14) business days of the conclusion of the Negotiation Period; or

(c) if the Parties mutually agree, the dispute may be settled by a single arbitrator under the *Arbitration Act*, SBC 2020, c. 2**.**

4.1.4 In no circumstances will sections 4.1.2, or 4.1.3 be construed as impeding or affecting the District's authority to enforce any of its bylaws, including, without limitation, its *Zoning Bylaw* and its *Servicing Bylaw*.

PART 5 – WAIVER, RELEASE, INDEMNITY, AND BAR TO RECOVERY

5.1 WAIVER, RELEASE, AND INDEMNITY

5.1.1 The Developer agrees to indemnify the District from any and all claims, causes of action, suites, demands, fines, penalties, costs, deprivation, expenses, and actual legal fees and disbursements whatsoever, whether based in law or equity, whether known or unknown, which anyone has or may have against the District or which the District incurs as a result of any loss, damage, or injury, including economic loss or deprivation, arising out of or in any way connected to any breach by the Developer of this Agreement.

5.1.2 The Developer hereby releases, saves harmless, and forever discharges the District from any claims, causes of action, suits, demands, fines, penalties, costs, deprivation,

expenses, or legal fees whatsoever which that Developer may have or claim against the District, whether based in law or equity, whether known or unknown, for any loss, damage, or injury, including economic loss or deprivation, that the Developer may sustain arising out of or connected with this Agreement, including the restrictions and requirements of this Agreement, the provisions of the Required Services and Amenities and the development of the Lands as contemplated under this Agreement, save and except as a result of any intentional acts or negligence by the District or any breach by the District of this Agreement.

5.1.3 The provisions of sections 5.1.1 and 5.1.2 and will survive the expiry or earlier termination of this Agreement.

5.2 NO RECOVERY OF AMENITIES

5.2.1 The developer expressly acknowledges and agrees that the expiry of this Agreement or any termination in accordance with section 3 or otherwise unless due to a breach by the District of this Agreement, does not entitle the Developer to recover any interest in or portion of the costs incurred in providing the Amenities or other contributions specified in the Schedules or elsewhere in this Agreement, or to seek restitution in relation thereto or in relation to any other obligation of the Developer as performed, and the Developer specifically agrees that the Specified Provisions of this Agreement for the period prior to expiry or termination provides sufficient consideration for the said Amenities and other contributions specified in the Schedule and elsewhere in this Agreement.

5.2.2 Despite section 5.2.1, if prior to final approval of the first application for Subdivision of the Lands after the commencement of the Term, the *Phased Development Agreement Bylaw,* is challenged and overturned in its entirety by a court of competent jurisdiction, the Developer will be entitled to recover any of the Amenities provided under this Agreement prior to final approval of the first application for subdivision of the Lands. In no case will legal fees paid to the District be recoverable.

5.2.3 Except to the extent resulting from the intentional acts or negligence of the District or any breach by the District of this Agreement, the Developer agrees not to commence or advance a legal proceeding of any kind to seek to quash, set aside, hold invalid this Agreement, the *Phased Development Agreement Bylaw,* or to recover any portion of the Amenities or other contributions provided under this Agreement, or seek restitution in relation to any of the Amenities or other contributions provided under this Agreement, and if the Developer does any of the foregoing, the provision of this Agreement to the Court will act as a full, complete, and binding answer and defence (except as to any intentional acts or negligence by the District or any breach by the District of this Agreement).

PART 6 - GENERAL TERMS AND CONDITIONS

6.1 **Costs**. The Developer and the District will perform their own obligations under the Agreement at their sole cost. This does not preclude the opportunity for cost shared projects being conducted in the future (such as Santina Park). Any cost sharing must be agreed to prior to the commencement of work and agreed to in writing.

6.2 **Access and Entry**. On reasonable advance written notice, the Developer will provide the District’s representatives with reasonable access to all plans, permits, specifications, and studies related to the Proposed Development to ascertain compliance with this

Agreement. The Developer agrees that the viewing of this documentation by the District’s representative does not create any legal obligation, in tort or otherwise, on the part of the District or its representative whether or not comments are given to the Developer, and whether or not the Developer chooses to act on comments that may be given. The Developer agrees that on reasonable advance written notice the District may, by its officers, employees, contractors, and agents, enter upon the Lands and within all buildings (subject to residential tenancy laws, as applicable) and structures thereon at all reasonable times to ascertain compliance with this Agreement.

6.3 **Powers Preserved**. Except as expressly set out in this Agreement, nothing in this Agreement prejudices or affects the rights or powers of the District in the exercise of its functions under the *Community Charter* or the *Local Government Act,* or any of its bylaws, or those of the Approving Officer under the *Land Title Act, Strata Property Act,* or *Bare Land Strata Regulations.*

6.4 **Severance**. If any part of this Agreement is held to be invalid, illegal or unenforceable by a Court of competent jurisdiction, the invalid provision may be severed, and will not affect the validity of the remainder of this Agreement, provided that if Section 2.2.1 or any provisions contained in Schedules 2,4,5,7,8,9,10 is severed from this Agreement pursuant to the provisions of this section 6.4, then the Developer may elect to terminate this Agreement in its entirety.

6.5 **Waiver**. No action or statement of either Party will constitute a waiver of any provision of this Agreement unless such waiver is expressly made in writing and signed by the waiving Party. The waiver by either Party of any breach by will not constitute a waiver of any further or other breach.

6.6 **Specific Performance**. The Developer acknowledges and agrees that, because of the public interest in ensuring that all of the matters described in this Agreement are complied with, the public interest strongly favours the award of a prohibitory or mandatory injunction, or an order for specific performance or other specific relief, by the Supreme Court of British Columbia at the instance of the District, in the event of an actual or threatened breach of this Agreement.

6.7 **Enurement**. This Agreement will enure to the benefit of and be binding upon the Parties and their respective heirs, administrators, executors, successors, and permitted assigns.

6.8 **Joint and Several**. The obligations of the Developer, if now or at any time comprised of more than one legal entity, will be joint and several. The Parties agree that as between the District and the Developer, either legal entity comprising the Developer may carry out the responsibilities, obligations and covenants of the Developer under this Agreement on behalf of the Developer and any decision, agreement, or act by either legal entity comprising the Developer with respect to the terms and conditions of this Agreement will bind the other legal entity comprising the Developer. The legal entities comprising the Developer may make agreements between themselves as to the obligations of the Developer under this Agreement.

6.9 **No Representations and Warranties**. It is mutually understood and agreed by and between the Parties that neither Party has made any representations, covenants, warranties, guarantees, promises, or agreements (oral or otherwise) with the other except for those contained in this Agreement.

6.10 **No Fettering**. It is mutually understood and agreed by and between the Parties that except as expressly set out in this Agreement, nothing contained or implied herein will

prejudice or affect the rights and powers of the District in the exercise of its functions under any public and private statutes, bylaws, orders and regulations, or the common law, all of which may be fully and effectively exercised in relation to the Lands as if this Agreement had not been executed and delivered by the Developer.

6.11 **Additional District Remedies**. The Developer acknowledges and agrees that, notwithstanding anything to the contrary herein and in addition to any other remedy in common law or equity, the District, acting reasonably, may, in accordance with applicable public law limitations on the withholding of development permits, building permits, and occupancy permits, withhold such permits for the purpose of ensuring compliance with and administering the terms of this Agreement.

6.12 **Statutory and Bylaw Provisions**. It is mutually understood and agreed by and between the Parties that:

(a) this Agreement does not:

(i) affect or limit any enactment or bylaw applying to the Lands except as provided under Sections 2.2.1 and 2.2.2; or

(ii) relieve the Developer from complying with any enactment or bylaw except as provided under Sections 2.2.1 and 2.2.2;

(b) the covenants herein will charge the Lands pursuant to 516(3)(d) of the *Local Government Act* and Section 219 of the *Land Title Act* and will be covenants, the burden of which will run with the Lands;

(c) all covenants made by the Developer herein will accrue solely to the benefit of the District;

(d) this Agreement may be modified pursuant to section 519 of the *Local Government Act*; and

(e) the Section 219 covenant may be modified by agreement of the District with the Developer, or discharged by agreement of the District and the Developer, pursuant to the provisions of Section 219 of the *Land Title Act,* and in accordance with any requirements to amend this Agreement as detailed in section 3.6.

6.13 **Notice**. Any notices or other communications required or permitted to be sent hereunder must be in writing and will be duly given if personally delivered or sent via courier:

To the District at:

District of Lake Country
10150 Bottom Wood Lake Road,
Lake Country, BC V4V 2M1

Attention: Chief Administrative Officer

To the Developer at:
11th floor, 938 Howe Street
Vancouver, BC V6Z1N9
Attention: John Macdonald

Either party may change his or its address for the sending of notice to such party by written notice to the other party sent in accordance with the provisions hereof.

6.14 **Time**. Time is of the essence for this Agreement and will remain of the essence notwithstanding the extension of any dates.

6.15 **Cumulative Remedies**. Any remedy provided in this Agreement is not exclusive and is be deemed to be cumulative with all available remedies at law or in equity.

6.16 **Relationship of the Parties**. No provision of this Agreement will be construed to create a partnership or joint venture relationship, an employer-employee relationship, a landlord-tenant relationship, or a principal-agent relationship between the Parties.

6.17 **Amendment**. This Agreement, including the Schedules, may not be modified or amended except by mutual written agreement of the Parties.

6.18 **Entire Agreement**. This Agreement, including its Schedules, contains the entire agreement and understanding of the Parties with respect to the matters contemplated by this Agreement and supersedes all prior and contemporaneous agreements between them with respect to such matters.

6.19 **Notice of Breach**. Each Party will promptly notify the other Party of any matter that is likely to give rise to or continue a breach of its or the other Party’s obligations under this Agreement.

6.20 **Legal Fees**. The Parties agree that each of them will bear their own legal fees incurred in relation to or arising out of this Agreement, including but not limited to the development of the Lands, provision of the Required Services and Amenities the drafting and negotiating of this Agreement and other necessary agreements, and legal advice pertaining to same.

6.21 **Counterparts**. This Agreement may be executed in counterparts with the same effect as if both Parties had signed the same document. Each counterpart is deemed to be an original. All counterparts will be construed together and constitute one and the same Agreement.

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Signature page is next page

IN WITNESS WHEREOF the Parties have set their hands and seals as of the day and year set out below:

THE DISTRICT OF LAKE COUNTRY, by its authorized signatory, this ___ day of _____, 20___:

_____
Sign Name

_____

Print Name

MACDONALD LAKESHORE PROPERTIES LTD., by its authorized signatory(ies), this ___ day of _____, 20___:

_____

Sign Name

_____

Print Name