

18 MAY 2011 14 17

FB414633

FB414634

**LAND TITLE ACT
FORM C**

(Section 233)

Province of British Columbia

GENERAL INSTRUMENT-PART 1 (This area for Land Title Office use)

Page 1 of 18 Pages

1. APPLICATION: (Name, address, phone number and signature of applicant, applicant's solicitor or agent)

2C
Christina Reed
YOUNG, ANDERSON
#1616 - 808 Nelson Street
Vancouver, BC V6Z 2H2
(604) 689-7400

Chr. R.
Christina Reed
Applicant's Solicitor

c/o West Coast Title Search Ltd
10104

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:*

(PID)

(LEGAL DESCRIPTION)

hw 5/18/2011 2:17:06 PM 2 1
Charge 2 \$148.80

1/3
027-151-891

Lot A Section 14 Comox District Plan VIP83482

3. NATURE OF INTEREST:*

Description

Document Reference
(page and paragraph)

Person Entitled to Interest

SEE SCHEDULE

4. TERMS: Part 2 of this instrument consists of (select one only)

(a) Filed Standard Charge Terms

D.F. No.

(b) Express Charge Terms

X

Annexed as Part 2

(c) Release

There is no Part 2 of this instrument.

A selection of (a) include any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in Item 3 is released or discharged as a charge on the land described in Item 2.

5. TRANSFEROR(S):*

PT COURTENAY ENTERPRISES LTD. (Inc. No. BC0667117) (as to Option)

ROYAL BANK OF CANADA (as to Priority)

6. TRANSFEREE(S): (including postal address(es) and postal code(s))*

THE CORPORATION OF THE CITY OF COURTENAY, 830 Cliffe Avenue, Courtenay, B.C. V9N 2J7

LAND TITLE ACT

FORM C

(Section 233)

Province of British Columbia

GENERAL INSTRUMENT-PART 1

Page 2


7. ADDITIONAL OR MODIFIED TERMS:
N/A

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

Officer Signature

Execution Date

Transferor Signature

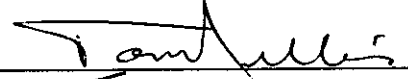

ALLYSON A. EDWARDS
Barrister & Solicitor
Kane, Shannon & Weiler
#220 - 7565 - 132nd Street
Surrey, B.C. V3W 1K5
Telephone 604-591-7321

Y M D
2011 05 16

PT COURTENAY ENTERPRISES
LTD. by its authorized
signatory(ies):

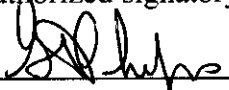

Name: Tom Nellis

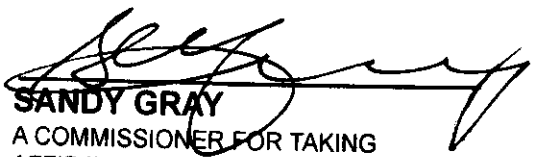
(as to both signatures)


Name: Tom Nellis.

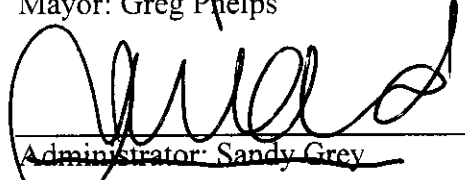
Transferee Signature

THE CORPORATION OF THE
CITY OF COURTENAY by its
authorized signatory(ies):


Mayor: Greg Phelps


SANDY GRAY
A COMMISSIONER FOR TAKING
AFFIDAVITS FOR BRITISH COLUMBIA
830 CLIFTON AVENUE (between signatures)
COURTENAY, BC V9N 2J7

2011 04 15


Administrator: Sandy Grey
JOHN WARD, CMC
MANAGER OF CORPORATE ADMINISTRATION

OFFICER CERTIFICATION:

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

* If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.

** If space insufficient, continue executions on additional page(s) in Form D.

Q:\00062\0228\Op-Cr-Highway Extension-Tunner Addition-V2 (Clean).Doc

Apr 12, 2011 2:31 PM/CR

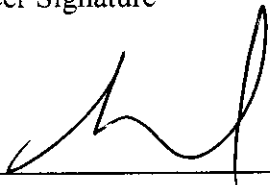
**LAND TITLE ACT
FORM D**

EXECUTIONS CONTINUED

Page 3

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

Officer Signature



Name of Officer


MICAH S. CLARK
Barrister & Solicitor
#201 - 467 Cumberland Rd.
Courtenay, BC, V9N 2C5
Phone: 250-334-4461

Execution Date
Y M D

2011 05 09

Party(ies) Signature

ROYAL BANK OF CANADA by
its authorized signatory(ies):


Name: **KEN SWIDER**
Name: **RON WEIR**

**LAND TITLE ACT
FORM E****SCHEDULE**

Page 4

Enter the required information in the same order as the information must appear on the Freehold Transfer Form, Mortgage Form or General Document Form.

3. NATURE OF INTEREST:*

Description	Document Reference (page and paragraph)	Person Entitled to Interest
Option to Purchase	Page 7, Article 3	Transferee
Priority Agreement granting Option to Purchase <u>FB414633</u> priority over Mortgage FB67982 extended by FB78088 and Assignment of Rents FB67983 extended by FB78089	Page 16	Transferee

**TERMS OF INSTRUMENT – PART 2
OPTION TO PURCHASE**

THIS AGREEMENT dated for reference the ____ day of April, 2011

BETWEEN:

PT COURTENAY ENTERPRISES LTD. (Inc. No. BC0667117)
1001 – 7445 – 132nd Street
Surrey, B.C. V3W 1J8

(the “Owner”)

AND:

ROYAL BANK OF CANADA
200 Bay Street
P.O. Box 1, Royal Bank Plaza
Toronto, ON M5J 2J5

(the “Bank”)

AND:

THE CORPORATION OF THE CITY OF COURTENAY
830 Cliffe Avenue
Courtenay, B.C. V9N 2J7

(the “City”)

GIVEN THAT:

- A. The City is a municipality incorporated pursuant to the *Local Government Act*, R.S.B.C. 1996, c. 323, and the *Community Charter*, S.B.C. 2003, c. 26;
- B. The Owner is the registered owner in fee simple of that certain parcel or tract of land and premises situate, lying and being in the City of Courtenay in the Province of British Columbia, being more particularly known and described as:

PID 027- 151-891
Lot A Section 14 Comox District Plan VIP83482

(hereinafter called the “Lands”);

- C. The City intends to extend the alignment of Turner Drive south of Hunt Road, and to do so the City will make its best efforts to obtain the necessary road allowance within that parcel legally described as PID 001-397-451, Remainder Lot 2 Section 14 Comox District Plan

20152 including the necessary subdivision approval from the Agricultural Land Commission. In the event that the City is not able to obtain the necessary land or approval, the City requires this option to purchase for an alternate alignment of the extension of Turner Drive;

- D. The Owner agrees to grant to the City an option to purchase a portion of the Lands in accordance with the terms of this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of the premises and promises of this Agreement, the sum of \$1.00 (the "Option Payment") paid by the City to the Owner, and other good and valuable consideration (the receipt and sufficiency of which are hereby expressly acknowledged by the parties), the parties agree as follows:

ARTICLE 1 INTERPRETATION

- 1.1 **Definitions.** In this Agreement, the following terms shall have the meanings set out below unless the context requires otherwise:

- (a) **"Agreement"** means this agreement and all schedules annexed hereto and any amendments hereto or modifications hereof and the terms "hereto", "herein", "hereby" and other similar terms are used in reference to this Agreement;
- (b) **"Business Day"** means any day other than Saturday, Sunday, or any statutory holiday in the Province of British Columbia;
- (c) **"Highway Area"** means that approximate 1376 square metre portion of the Lands shown on the sketch plan as "Existing Area Subject to Right-to-Purchase within Covenant FB060660 (1375 m²)" attached hereto as Schedule "A";
- (d) **"LTO"** means the Victoria Land Title Office;
- (e) **"Permitted Encumbrances"** means the following encumbrances registered against the Lands:
 - (i) Right of Way D22179 in favour of the Corporation of the City of Courtenay;
 - (ii) Statutory Right of Way FB78094 in favour of the Corporation of the City of Courtenay;
 - (iii) any charges or encumbrance as may be required as a condition of Subdivision (as hereinafter defined); and
 - (iv) the reservations and exceptions contained in the original grant from the Crown; and

- (f) **“Person”** is to be broadly interpreted and includes an individual, a corporation, a partnership, a trust, an unincorporated organization, the government of a country or any political subdivision thereof, or any agency or department of any such government.

ARTICLE 2 GRANT OF OPTION TO ACQUIRE HIGHWAY AREA

- 2.1 **Option.** The Owner hereby grants, under seal, to the City, the sole and exclusive option (the “Option”), irrevocable within the time for exercise by the City herein limited, to acquire the Lands.
- 2.2 **Option Payment.** At the time of full registration of this Agreement in the LTO, the City will pay to the Owner the non-refundable Option Payment.
- 2.3 **Non-Exercise of Option.** If the Option is not exercised within the time and the manner herein set forth, the Option will be null and void and no longer binding upon the parties hereto and the Option Payment will be retained by the Owner as consideration for the grant of the Option.

ARTICLE 3 EXERCISE OF OPTION

- 3.1 **Exercise of Option.** Subject to the following section, the Option may be exercised by the City at any time from 6:00 p.m. on the date of registration of this Agreement in the LTO and ending midnight on April 24, 2022, by the City giving written notice to the Owner in the manner set out in this Agreement for the giving of notices.
- 3.2 **Triggering Event.** The Option may only be exercised by the City in the event that the City determines on or before April 24, 2022, in its sole discretion, that the construction of the extension of Turner Drive is not feasible over that property legally described as PID 001-397-451, Remainder Lot 2 Section 14 Comox District Plan 20152 and that construction of the extension of Turner Drive on the Highway Area will commence within 60 days.
- 3.3 **Non-Exercise of Option.** The parties acknowledge that the City may elect not to exercise the Option for any reason.
- 3.4 **Site Profile.** The Owner will provide the City with a site profile of the Lands, as required under the *Environmental Management Act* or any successor legislation, within five business days of the date the Option is exercised by the City.
- 3.5 **Relocation of Improvements** - Upon receipt from the City of notice of intention to exercise its Option, the Grantee may relocate the existing parking infrastructure, including light standards and parking curbs, from the Highway Area to another location on the Lands, with the reasonable relocation costs to be borne by the City. These costs will not include the creation of additional parking or driveway access compromised or eliminated by the transfer/dedication of the Highway Area.

ARTICLE 4 COMPLETION

- 4.1 **Binding Contract.** If the Option is exercised in the manner herein provided, this Agreement will become a binding contract of purchase and sale on the terms and conditions of this Agreement.
- 4.2 **Completion Date.** The sale will be completed upon the terms herein contained on the date (the "Completion Date") chosen by the City, provided that the Completion Date must be at least 10 days after satisfaction of the condition precedent and the Completion Date must not be more than 182 days after the date on which the City exercises the Option.
- 4.3 **Purchase Price.** The purchase price ("Purchase Price") for the Highway Area will be \$88,597.00 plus an adjustment on account of inflation, being an increase by the same percentage as the percentage increase in the "all items" Consumer Price Index for Canada (Not Seasonally Adjusted), as published by Statistics Canada, from the date of registration of this Agreement to the date closest to the date of exercise of the Option.
- 4.4 **Condition Precedent: Subdivision.** It is a condition precedent to the purchase and sale that, within 182 days after the City exercises the Option, a subdivision plan (the "Subdivision Plan") be executed by all required signatories and approved by the Approving Officer and by any other approving authorities, to subdivide the Highway Area from the Lands.

The Owner agrees that the City may acquire the Highway Area as a fee simple parcel or as highway, in which case the Subdivision Plan shall be a highway dedication plan under section 107 of the *Land Title Act* and in which case the Owner shall arrange for all chargeholders to execute the Subdivision Plan and in which case, since there is no title to dedicated highway, the Permitted Encumbrances shall not appear on title, but the City accepts that the works and undertakings of the Permitted Encumbrances are permitted on and within the Highway Area.

Subdivision is a condition precedent for the benefit of both parties and this condition may not be waived.

- 4.5 **Effect of Condition.** If the above condition precedent is satisfied and the party benefiting from the condition gives notice to the other party by the date so specified, this Agreement will become an unconditional contract for the purchase and sale of the Highway Area.
- 4.6 **Subdivision Obligations.** Upon the exercise of the Option by the City, the City shall, at its own cost, apply for subdivision approval and prepare the Subdivision Plan.

4.7 **Subdivision Requirements.** The Owner will execute the Subdivision Plan and cause it to be executed by all Persons required to sign it. The Owner will take all steps to facilitate the Subdivision, including the execution of registrable documents required by the Approving Officer. The Owner acknowledges that nothing in this Agreement commits the Approving Officer to approve the Subdivision Plan.

4.8 **Bank Agreement.** The Bank agrees that it will execute the Subdivision Plan and if the City acquires the Highway Area as a fee simple parcel, the Bank will also discharge its Mortgage FB67982 (extended by FB78088) and Assignment of Rents (FB67983 extended by FB78089) (collectively, the "Financial Charges") from the Highway Area.

The Bank further agrees to grant priority to any new charges required to be registered as a condition of subdivision approval. The Bank will not file a notice of objection pursuant to section 242 of the *Land Title Act*.

4.9 **Possession.** Upon completion of the sale and purchase of the Highway Area, the City will have vacant possession of the Highway Area free from all liens, charges and encumbrances other than the Permitted Encumbrances, or, if the Highway Area is acquired by the City as highway, free of all liens, charges and encumbrances, but subject to the works and undertakings of the Permitted Encumbrances.

4.10 **Adjustments.** The parties agree that there will be no adjustments as to taxes or any other matters normally adjusted between a vendor and purchaser on the sale of real property in British Columbia between them with regard to the transaction contemplated by this Agreement. However, the amount payable by the City to the Bank for Discharges of the Financial Charges (as later defined) will be credited to the City as an adjustment to the Purchase Price.

4.11 **Risk.** The Highway Area will be at the Owner's risk until the acceptance of the Transfer (if applicable) and the Subdivision Plan for registration in the LTO and thereafter at the City's risk.

ARTICLE 5 CLOSING PROCEDURE

5.1 **Closing Documents.** The City will cause the City's solicitors to prepare and present to the Owner or its solicitors a GST certificate signed by the City in the form attached as Schedule "B" hereto and the following closing documents:

- (a) if the City is taking the Highway Area as a fee simple parcel, a Form A Freehold Transfer (the "Transfer") of the Highway Area;
- (b) the Statutory Declaration (as defined in section 6.2(f));
- (c) if the City is taking the Highway Area as a fee simple parcel, discharges (the "Discharges") of the Financial Charges from the Highway Area; and

- (d) such other appropriate documents and assurances as may be requisite in the opinion of the City's solicitors for more perfectly and absolutely transferring title to the Highway Area to the City.

5.2 **Delivery of Documents.** Before the Completion Date, the Owner will deliver or cause its solicitors to deliver to the City's solicitors the closing documents to be executed by the Owner and the Bank, all executed and in registrable form, as applicable.

5.3 **Closing Procedure.** The conveyance of the Highway Area by the Owner to the City will be completed in accordance with the following procedure:

- (a) after receipt of the documents from the Owner and the Bank, the City, at its own cost, will cause the City's solicitors to apply to register the following in the LTO on the Completion Date, upon receipt of a satisfactory pre-index search of the Lands:
 - (i) the Subdivision Plan;
 - (ii) the Transfer (if applicable);
 - (iii) the Discharges (if applicable);
 - (iv) discharge of the Option from the remainder of the Lands; and
 - (v) other charges required as a condition of Subdivision;
- (b) following the application referred to in the subsection above and upon receipt by the City's solicitors of a title search of the Highway Area showing the City as registered owner, subject only to the Permitted Encumbrances, or if the Highway Area is taken by the City as highway, upon receipt by the City's solicitors of a title search of the remainder of the Lands showing full registration of the Subdivision Plan, the City will:
 - (i) cause the City's solicitors to deliver to the Bank the sum stated in the consent and priority agreement attached hereto to be payable to the Bank for discharge of the Financial Charges from the Highway Area; and
 - (ii) cause the City's solicitors to deliver to the Owner's solicitors a trust cheque for the adjusted Purchase Price.

ARTICLE 6 OWNER'S COVENANTS AND REPRESENTATIONS AND WARRANTIES

6.1 **Owner's Covenants.** The Owner covenants and agrees that it will:

- (a) permit the City and the City's employees, engineers, agents, surveyors and advisors to carry out such inspections, tests, studies, surveys and other

investigations of the Highway Area as the City may require and will provide reasonable cooperation and assistance to the City and its consultants in conducting such investigations;

- (b) cooperate with the City and its consultants in allowing the City, at the City's sole cost and expense, to conduct environmental tests or audits of the Highway Area and provide to the City or its consultants all information in its possession or control or to its knowledge relating to those areas;
- (c) maintain in force insurance covering loss or damage to the Lands and covering public liability, in both cases against such risks and to such limits as are in accordance with prudent business practice and suitable to the Lands; and
- (d) preserve the Lands intact as would a prudent owner during the term of this Agreement.

6.2 **Owner's Representations and Warranties.** The Owner represents and warrants to the City as representations and warranties that are true at the date hereof and will be true at the Completion Date that are to continue and to survive the purchase of the Highway Area, regardless of any independent investigations that the City may cause to be made, that, subject to the limitations, if any, expressed herein:

- (a) the Owner has good and marketable title to the Lands and the City will have good and marketable title to the Highway Area on the Completion Date, free and clear of all liens, claims, charges and encumbrances other than the Permitted Encumbrances;
- (b) the Owner is a body corporate duly incorporated and validly existing under the laws of British Columbia and duly qualified to own and sell the Highway Area with full power and authority and capacity to enter into this Agreement and to carry out the transactions contemplated herein;
- (c) the Owner is in good standing with the Office of the Registrar of Companies for British Columbia, has made all necessary filings required by the *Business Corporations Act* (British Columbia) and has never been struck from the register of companies maintained by the Office of the Registrar of Companies for British Columbia;
- (d) the Owner has taken all necessary corporate actions on the part of the directors and shareholders to authorize and approve the execution and delivery of this Agreement and the completion of the transactions contemplated herein;
- (e) there is no action or proceeding pending or to the Owner's knowledge threatened against the Owner before any court, arbiter, arbitration panel or administrative

tribunal or agency which, if decided adversely to the Owner, might materially affect the Owner's ability to perform the Owner's obligations hereunder;

- (f) the Owner is not a non-resident of Canada for the purposes of the *Income Tax Act* (Canada) and the Owner will provide the City with a statutory declaration of this before the Completion Date (the "Statutory Declaration");
- (g) there is no action, suit, claim or litigation pending or threatened with respect to the Lands or the existing use or occupancy of them and no state of facts exists which could constitute the basis of any such action, suit, claim or litigation;
- (h) the Owner has not failed to disclose to the City any material fact or information concerning the Lands of which the Owner is aware; and
- (i) to the best of its knowledge, the Lands are not and will not be contaminated, there are no environmental orders made in respect of the Lands and the Lands comply and will continue to comply with all environmental laws.

6.3 **Owner's Indemnity.** The Owner agrees to indemnify and save harmless the City and its elected officials, officers, employees, agents and others from all losses, actions, demands, claims, expenses and harm of any kind which the City or its elected officials, officers, employees, agents or others may directly or indirectly suffer in relation to environmental contamination of or from the Highway Area caused or occurring before the Completion Date, and this indemnity will survive the transfer of the Highway Area to the City.

6.4 **No Encumbrances.** The Owner shall not grant or register or permit any new encumbrances of any kind on the Lands which affect or may affect the Highway Area unless the Owner has obtained the prior written consent of the City to such encumbrance, which consent may be unreasonably withheld. For clarity, the City may withhold its consent unless the chargeholder agrees to enter into an agreement with the City to sign the Subdivision Plan.

ARTICLE 7 REMEDIES

7.1 **Equitable Remedies.** The Owner acknowledges that a breach of its obligation to transfer the Highway Area to the City subject only to Permitted Encumbrances would result in loss to the City and that the City may not adequately be compensated for such loss by monetary award. Accordingly, in the event of any such breach, in addition to all other remedies available to the City at law or in equity, the City shall be entitled as a matter of right to apply to a Court of competent jurisdiction, for such relief by way of specific performance or other equitable remedies, as may be appropriate to ensure compliance with the provisions of this Agreement.

ARTICLE 8 GENERAL

- 8.1 **Time.** Time will be of the essence of this Agreement and will remain of the essence notwithstanding the extension of any of the dates hereunder.
- 8.2 **Entire Agreement.** This Agreement sets forth the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings among the parties with respect to the matters herein, and there are no oral or written agreements, promises, warranties, terms, conditions, representations or collateral agreement whatsoever, express or implied, other than those contained in this Agreement.
- 8.3 **Survival of Representations and Warranties.** All representations, warranties, covenants and agreements made by the parties will survive the Completion Date and the transfer of the Highway Area to the City.
- 8.4 **Amendment.** This Agreement may be altered or amended only by an agreement in writing signed by the parties hereto.
- 8.5 **Notices.** Any notice or other writing required or permitted to be given under this Agreement or for the purposes of this Agreement to any party shall be sufficiently given if delivered by hand, or if sent by prepaid courier or if transmitted by facsimile to such party:
- (a) in the case of a notice to the City, at:

City of Courtenay
830 Cliffe Avenue
Courtenay, B.C. V9N 2J7
Attention: Manager of Corporate Administration
Facsimile No.: (250) 334-4241
 - (b) in the case of a notice to the Owner, the address of the Owner as shown on the title to the Lands or if the Owner is a corporation, to the registered address as shown on a B.C. Company Summary from the Corporate Registry,
 - and
 - (c) in the case of a notice to the Bank, to:

Royal Bank of Canada
1015 Ryan Road
Courtenay, B.C. V9N 3R6
Attention: Ken Snyder, Senior Account Manager
Email: ken.snyder@rbc.com

or at such other address or addresses as the party to whom such notice or other writing is to be given shall have last notified the party giving the same in the manner provided in this section. Any notice or other writing sent in compliance with this section shall be deemed to have been given and received on the day it is so delivered unless that day is not a Business Day, in which case the notice shall be deemed to have been given and received on the next day that is a Business Day.

- 8.6 **Attornment.** Each of the parties attorns to the exclusive jurisdiction of the courts of the Province of British Columbia.
- 8.7 **Enurement.** This Agreement shall enure to the benefit of and be binding on the parties hereto and their respective successors and assigns.
- 8.8 **Further Assurances.** Each of the parties hereto shall, with reasonable diligence, do all such things and provide all such reasonable assurances and assistance as may be required to consummate the transactions contemplated hereby and each such party shall provide such further documents or instruments required by any other party as may reasonably be necessary or desirable to give effect to the terms and purpose of this Agreement and carry out its provisions, before or after the Completion Date.
- 8.9 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia and the federal laws of Canada as applicable.
- 8.10 **No Public Law Duty.** Whenever in this Agreement the City is required or entitled by the terms hereof to exercise any discretion in the granting of consent or approval, or is entitled to make any determination, take any action or exercise any contractual right or remedy, the City may do so in accordance with the contractual provisions of this Agreement and no public law duty, whether arising from the principles of procedural fairness or the rules of natural justice or otherwise, shall have any application.
- 8.11 **Waiver.** No supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the party to be bound thereby. No waiver of any of the provisions of this Agreement shall be deemed to or shall constitute a waiver of any other provisions (whether or not similar) nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.
- 8.12 **Statute References.** Any reference in this Agreement to any statute or any section thereof shall, unless otherwise expressly stated, be deemed to be a reference to such statute or section as amended, restated or re-enacted from time to time.
- 8.13 **Headings.** The headings appearing in this Agreement have been inserted for reference and as a matter of convenience and in no way define, limit or enlarge the scope or meaning of this Agreement or any provision thereof.

- 8.14 **Option Runs With the Lands.** The Option runs with the Lands and binds the successors in title to the Lands. For certainty, unless the context expressly requires otherwise, the term "Owner" refers to the current and each future owner of the Lands.
- 8.15 **Registration.** The Owner agrees to do everything necessary, at the Owner's expense, to ensure that the Option is registered against title to the Lands with priority over all financial charges, liens and encumbrances registered, or the registration of which is pending, at the time of application for registration of each charge.
- 8.16 **Deed and Contract.** By executing and delivering this Agreement each of the parties intends to create both a contract and a deed executed and delivered under seal.
- 8.17 **No Compensation.** Except as set out in section 3.5, the Owner shall not be entitled to any further compensation or payment for the transfer/dedication of the Highway Area as public highway or for any injurious affection or disturbances resulting therefrom. The Owner agrees that it shall not be entitled to any further consideration in value, compensation or to make a claim for any reduction in value, if any, to the remaining portion of the Lands or other lands of the Owner resulting from the acquisition or use of the Highway Area as highway. Without limitation, the Owner shall not be entitled to and agrees not to seek compensation for business losses, loss of profit, loss of market value, relocation costs or other consequential loss by reason of the transfer/dedication of the Highway Area in this Agreement.
- 8.18 **No Effect on Laws or Powers.** This Agreement does not:
- (a) affect or restrict the City's ability to acquire any land or interest in land by expropriation or other legal means of acquisition;
 - (b) affect or restrict the discretion, rights, duties or powers of the City under any enactment (as defined in the *Interpretation Act*) or at common law; or
 - (c) relieve the Owner from complying with any enactment or the common law.
- 8.19 **Obligations on City.** The rights given to the City by this Agreement are permissive only and nothing in this Agreement:
- (a) imposes any duty of care or other legal duty of any kind on the City to the Owner or to anyone else;
 - (b) obliges the City to enforce this Agreement, which is a policy matter within the sole discretion of the City; or
 - (c) obliges the City to perform any act, or to incur any expense for any of the purposes set out in this Agreement.

8.20 **Interpretation.**

- (a) Wherever the singular or masculine or neuter is used in this Agreement, the same shall be construed as meaning the plural, the feminine or body corporate where the context or the parties so require.
- (b) The word "including" when following any general statement or term shall not be construed to limit the general statement or term to the specific items set forth following the general statement or term (or to similar terms) whether or not non-limiting language (such as "without limitation") is used, but rather shall be construed to permit the general statement or term to refer to all other items that could reasonably fall within its broadest possible scope.

As evidence of their agreement to be bound by the terms of this instrument, the parties each have executed and delivered this Agreement under seal by executing Part 1 of the *Land Title Act* Form C to which this Agreement is attached and which forms part of this Agreement.

CONSENT AND PRIORITY AGREEMENT

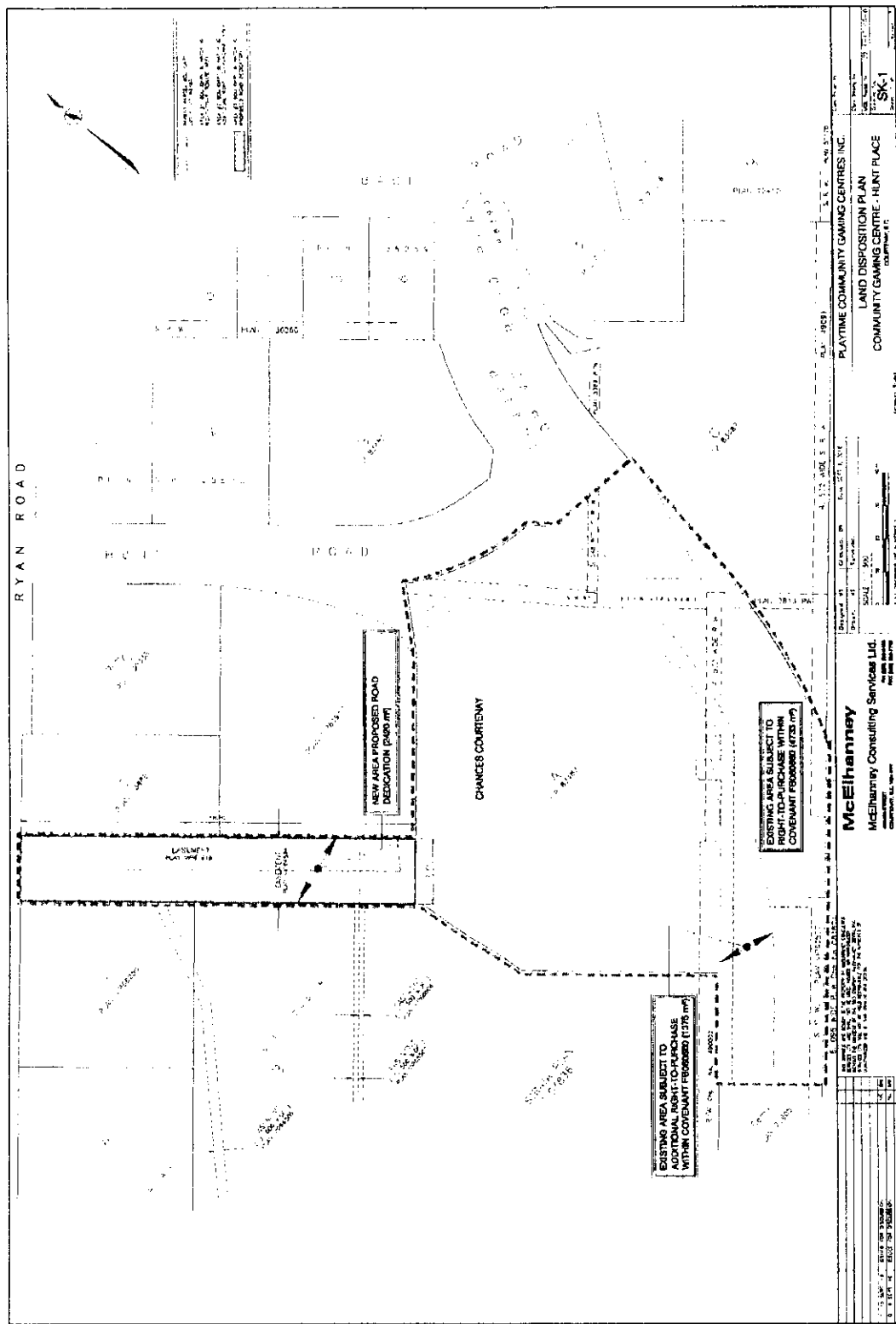
WHEREAS the ROYAL BANK OF CANADA (the "Bank") is the holder of a Mortgage and Assignment of Rents against the Lands, which mortgage and assignment of rents are registered in the Victoria Land Title Office under numbers FB67982 (extended by FB78088) and FB67983 (extended by FB78089), respectively (collectively, the "Bank Charge").

This Consent and Priority Agreement is evidence that in consideration of payment to it of Two Dollars (\$2.00) by the City, the receipt and sufficiency of which is acknowledged by the Bank, the Bank and the City covenant and agree as follows:

1. The Bank hereby consents to the granting and registration of the Option to Purchase attached hereto (the "City Charge") and the Bank hereby agrees that the City Charge shall be binding upon its interest in and to the Lands.
2. The Bank hereby grants to the transferee described in item 6 of the *Land Title Act* Form C attached hereto priority for the City Charge over the Bank's right, title and interest in and to the Lands, and the Bank does hereby postpone the Bank Charge and all of its right, title and interest thereunder to the City Charge as if the City Charge had been executed, delivered and registered prior to the execution, delivery and registration of the Bank Charge.
3. The Bank will not file a notice of objection pursuant to section 242 of the *Land Title Act*;
4. The Bank requires the sum of \$0 to discharge the Bank Charge from the Highway Area.
5. The Bank will execute the Subdivision Plan and, if the City acquires the Highway Area as a fee simple parcel, the Bank will deliver a registrable discharge of the Bank Charge from the Highway Area in accordance with the terms of this Agreement.

IN WITNESS WHEREOF, the Bank has executed and delivered this Consent and Priority Agreement by executing the *Land Title Act* Form D above which is attached hereto and forms part of this Agreement.

Schedule "A"



SCHEDULE B

Goods and Services Tax Declaration

To: PT COURTENAY ENTERPRISES LTD. (the "Vendor")

RE: An agreement between the Corporation of the City of Courtenay (the "Purchaser") and the Vendor dated for reference _____, 2011 and being an Option to Purchase (the "Agreement")

The City hereby certifies that:

1. The City is registered under Subdivision d of Division V of Part IX of the *Excise Tax Act* ("ETA") for the collection and remittance of the goods and services tax ("GST") and its registration number is _____.
2. The City will remit directly to the Receiver General of Canada the GST payable, and file the prescribed Form GST 60 pursuant to subsection 228(4) of the ETA in connection with the sale and conveyance of the Property.
3. The Property transferred pursuant to the Agreement:
 - (a) is being purchased by the City as principal for its own account and is not being purchased by the City as an agent, trustee, or otherwise on behalf of or for another person; and
 - (b) does not constitute a supply of a residential complex made to an individual for the purposes of paragraph 221(2)(b) of the ETA.

Dated at _____ this _____ day of _____, 201__.

CORPORATION OF THE CITY OF
COURTENAY by its authorized signatory:

Authorized Signatory

END OF DOCUMENT