

TERMS OF INSTRUMENT - PART 2.

(Section 219 *Land Title Act*)

THIS AGREEMENT dated for reference the 30th day of July, 2025

BETWEEN:

SILVER SIDE LAND CORP. and **SILVERADO LAND CORP.**, both having
offices at 399 Clubhouse Drive, Courtenay, British Columbia V9N 9G3

(collectively, the “**Owner**”)

AND:

CITY OF COURTENAY, a municipal corporation under the *Community Charter* (British Columbia), 830 Cliffe Ave., Courtenay, British Columbia
V9N 2J7

(the “**City**”)

GIVEN THAT:

- A. The Owner is the registered Owner of in fee simple of those lands in Courtenay, British Columbia herein referred to collectively as the “**Lands**” that are shown outlined in bold in the reduced copy of the Preliminary Consolidation Plan, a reduced copy of which is attached Schedule “A”, and legally described below:
- (i) All of that parcel legally described as LOT 1, PLAN VIP76495, DISTRICT LOT 206, COMOX LAND DISTRICT (PID: 025-889-486); and
 - (ii) portions of the parcels legally described as:
 - (1) BLOCK 72, COMOX LAND DISTRICT EXCEPT PLAN 1691R, & EXC PL VIP2117 RW & EXC PART IN PLANS VIP49168 VIP53544 VIP53936 VIP55887 VIP56345 VIP56997 VIP57216 VIP61372 VIP61373 VIP61374 VIP61375 VIP64932 VIP67278 VIP68539 VIP71399 VIP72239 VIP73546 VIP74891 VIP74892 VIP74893 VIP75389 VIP76675 VIP76772 VIP77537 VIP78213 VIP78293 VIP78614 VIP79916 VIP80521 (PID: 000-876-291); and
 - (2) THAT PART OF BLOCK 72, COMOX DISTRICT SHOWN OUTLINED IN RED ON PLAN 1691R EXCEPT PARTS IN PLAN VIP68538 AND VIP791399 (PID: 009-559-205);
- B. The Owner has agreed to grant to the City a covenant under section 219 of the *Land Title Act* on the terms and conditions of this Agreement to set out terms and conditions for the development and use of the Lands.

NOW THEREFORE THIS AGREEMENT WITNESSES that pursuant to section 219 of the Land Title Act, and in

consideration of the premises and the mutual covenants and agreements contained herein and the sum of One Dollar (\$1.00) now paid to the Owner by the City (the receipt and sufficiency whereof is hereby acknowledged), the Owner covenants and agrees with the City as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, the following terms have the following meaning:

- (a) **“Approving Officer”** means the person referred to in section 1.4(c);
- (b) **“Building”** means any building or structure, below or above ground, to be constructed on the Lands from time to time;
- (c) **“Building Bylaw”** means Building Bylaw No. 3114;
- (d) **“Building Permit”** means a permit under the Building Bylaw authorizing construction of any Building or a portion thereof, including a permit to construct a foundation structure;
- (e) **“Claim”** means any actual, potential or threatened claim, demand, suit, action, cause of action, cost recovery action, proceeding, investigation, charge, ticket, summons, citation, direction, inquiry, order and any other assertion of or with respect to liability or responsibility of any kind arising, asserted or threatened, formally or informally, pursuant to or based upon any enactment, any agreement or contract or at common law or in equity (whether arising in respect of tort, contract or otherwise);
- (f) **“Conceptual Lot Layout 2025”** means drawing titled “Preliminary Infrastructure Master Plan (PIMP) Conceptual Layout”, prepared by Koers & Associated Engineering Ltd, Revision 3, dated May 21, 2025, a reduced copy of which is attached as Schedule “B”;
- (g) **“Consolidation Plan”** means a reference plan by a British Columbia Land Surveyor that consolidates the Lands into a single parcel for the purpose of precisely defining those parts of the Lands that are subject to the Rezoning Bylaw;
- (h) **“Dawn to Dawn Modular Home”** means the provision of one modular home for a location to be determined by the City of Courtenay, either through security or provision;
- (i) **“DCC Program”** means, collectively and at any given time the City’s development cost charge program in existence at such time in accordance with the City’s bylaws;
- (j) **“Development”** means the residential development consisting of future Subdivisions to create residential lots and the construction of multi-family buildings in approximately the configuration shown on the Conceptual Lot Layout 2025, which is proposed to be constructed on the Lands in stages, based on the Phasing Plan, and in accordance with the City’s Zoning Bylaw and other applicable enactments, including all incidental works and Site Preparation Works;
- (k) **“Development Particulars”** means the particulars for each Phase described in sections 2.9 to 2.16;

- (l) **“EDP”** means an Environmental Development Permit obtained in accordance with the guidelines in the Official Community Plan;
- (m) **“Environmental Master Plan”** means a master plan by Corvidae Environmental Consulting Inc., dated April 2025, a copy of which is attached to this Agreement as Schedule “D”, and includes any subsequent revisions as may be submitted by the Owner and accepted from the City from time to time until completion of the Development;
- (n) **“ESA”** means the environmentally sensitive areas identified in the Environmental Master Plan;
- (o) **“Expenses”** means all liabilities, obligations, duties, losses, damages, costs, expenses (including legal fees and expenses on a solicitor and own client basis, and fees and disbursements of experts, consultants and contractors, and costs and expenses with respect to or related to security bonds, investigation, survey, sampling, testing, remediation, reclamation, monitoring and reporting and other services), penalties, fines and monetary sanctions and all amounts paid to settle a Claim, or to satisfy any judgment, order, decree, directive, award or other obligation to pay any amount of whatever nature or kind;
- (p) **“Land Title Act”** means the *Land Title Act*, RSBC 1996, c 250;
- (q) **“Local Government Act”** means the *Local Government Act*, RSBC 2015, c 1;
- (r) **“Lands”** until the deposit of the Consolidation Plan has the meaning set out in Recital A, and after the deposit of the Consolidation Plan means the land contained in the Consolidation Plan;
- (s) **“Lannan Parks Master Plan”** means the Lannan Parks Master Plan by Bloom Landscape Architecture, dated May 9, 2025, a copy of which is attached to this Agreement as Schedule “C”, and includes any subsequent revisions as may be submitted by the Owner and accepted from the City from time to time until completion of the Development;
- (t) **“LTO”** means the Land Title Office;
- (u) **“Master Plans”** means collectively the Environmental Master Plan, the Lannan Parks Master Plan, the Preliminary Infrastructure Master Plan, and the Preliminary Stormwater Management Plan;
- (v) **“McElhanney Letter”** means the letter dated June 27, 2025, attached as Schedule “G”;
- (w) **“MOTT”** means the Ministry of Transportation and Transit;
- (x) **“MOTT Crossing Permit”** means the approval from MOTI described in section 1.5(a);
- (y) **“Official Community Plan”** means the Official Community Plan Bylaw No. 3070, 2022;
- (z) **“Other Phases”** means any Phase other than Phase 1 or Phase 2;
- (aa) **“Parkland”** means the park land that the Owner is required to dedicate pursuant to section 510 of the *Local Government Act*;

- (bb) **“Permit”** means any one or more of the development permit, development variance permit, Building Permit, occupancy permit, approval for occupancy on a provisional basis, or other similar permit or authorization which the City has the regulatory authority to issue or refuse;
- (cc) **“Phase”** means any one of the phases identified in the Phasing Plan, excluding Phase 1;
- (dd) **“Phase 1”** means the Britannia Place bare land strata expansion;
- (ee) **“Phase 2”** means the first Subdivision created from the Lands, excluding Phase 1;
- (ff) **“Phasing Plan”** means Figure 2 from the Preliminary Infrastructure Master Plan, titled Preliminary Infrastructure Management Plan (PIMP) Conceptual Servicing Plan, Revision 2, a reduced copy of which is attached to this Agreement as Schedule “H”;
- (gg) **“Preliminary Infrastructure Master Plan”** means one master servicing plan by Koers & Associates Engineering Ltd., dated May 22, 2025, a copy of which is attached to this Agreement as Schedule “E”, and includes any subsequent revisions as may be submitted by the Owner and accepted from the City from time to time until completion of the Development;
- (hh) **“Preliminary Stormwater Management Plan”** means one master storm water management plan by Koers & Associates Engineering Ltd., dated May 22, 2025, a copy of which is attached to this Agreement as Schedule “F”, and includes any subsequent revisions as may be submitted by the Owner and accepted from the City from time to time until completion of the Development;
- (ii) **“Rezoning Bylaw”** means Zoning Bylaw Amendment Bylaw No 2973 and Official Community Plan Amendment Bylaw No. 2072.
- (jj) **“SDS Bylaw”** means the Courtenay Subdivision and Development Servicing Bylaw No. 2919;
- (kk) **“Site Preparation Works”** means the following in respect to the Development: all site preparation works typically carried out to prepare the site for the construction of buildings or the installation of civil works and services, including excavation, remediation, filling, preloading and grading;
- (ll) **“Subdivision”** means to divide, apportion, consolidate or subdivide the Lands, 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*;
- (mm) **“Subdivision Plan”** means a plan prepared by a British Columbia Land Surveyor for the purpose of subdividing any portion of the Lands, other than the Consolidation Plan;
- (nn) **“Transportation Impact Assessment”** means the 2021 report by McElhanney; and

(oo) **“Zoning Bylaw”** means the Zoning Bylaw No. 2500, 2007.

1.2 Schedules

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

- (a) Schedule A – Preliminary Consolidation Plan
- (b) Schedule B - Conceptual Lot Layout 2025;
- (c) Schedule C – Lannan Parks Master Plan
- (d) Schedule D – Environmental Master Plan
- (e) Schedule E – Preliminary Infrastructure Master Plan
- (f) Schedule F – Preliminary Stormwater Management Master Plan
- (g) Schedule G – McElhanney Letter
- (h) Schedule H - Phasing Plan

1.3 Interpretation

In this Agreement:

- (a) words importing the singular number include the plural and vice versa and words importing the neuter gender include the masculine and the feminine genders;
- (b) the division of this Agreement into articles and sections and the insertion of headings are for convenience only and will not affect the construction or the interpretation of this Agreement;
- (c) references to any article, section or schedule will, unless the context otherwise requires, mean that article, section or schedule of this Agreement;
- (d) every reference to each party is deemed to include the heirs, executors, administrators, personal representatives, successors, servants, employees, agents, contractors, officers, licensees and invitees of such party, wherever the context so requires or allows;
- (e) the words “include” and “including” are to be construed as meaning “include without limitation” and “including without limitation”;
- (f) all payments to be made will be deemed to be payments in lawful currency of Canada;
- (g) reference to “business day” means all days other than Saturday, Sunday, Easter Monday, Boxing Day and statutory holidays in the Province of British Columbia;
- (h) reference to “governmental approval” means all federal, provincial, regional, municipal and health authority approvals, permits, authorizations of any nature and kind, lawfully required from time to time pursuant to any enactment;
- (i) reference to “party” and “parties” means the one or more parties to this Agreement, as the context demands;

- (j) reference to a whole, for example, the “Lands” and the “Development”, includes reference to a portion thereof;
- (k) unless expressly stated otherwise, all references to enactments refer to enactments of the Province of British Columbia, as amended or replaced from time to time. All reference to bylaws and policies refers to the bylaws and policies of the City, as amended or replaced from time to time.

1.4 Owner Acknowledgements

The Owner acknowledges, covenants and agrees that:

- (a) except as expressly provided, nothing in this Agreement will relieve the Owner from any obligation or requirement arising under any applicable statute, bylaw or regulation in respect of the use, subdivision and development of the Lands;
- (b) nothing contained or implied in this Agreement will prejudice or affect the City’s rights, powers, duties or obligations in the exercise of its functions pursuant to the *Local Government Act*, the *Community Charter* or other statutes, bylaws, orders and regulations;
- (c) nothing contained or implied in this Agreement will prejudice or affect the rights, powers, duties or obligations of the approving officer for the City (the “**Approving Officer**”) in the exercise of their functions pursuant to the *Land Title Act*, the *Local Government Act*, or other statutes, bylaws, orders and regulations;
- (d) the purpose of this Agreement is to provide a structure for the Development, including the phasing of the Development, the servicing of the Development, the amenities provided by the Owner to the City and the general public in connection with the Development and the legal agreements to be executed and delivered by the Owner to the City in conjunction with the Subdivision Plan for each Phase;
- (e) the City may withhold the approval or issuance of a Permit, Subdivision approval and any other authorization if the Subdivision, Building or use of the Lands would result in non-compliance with this Agreement;
- (f) the City may issue a “Stop Work Order” in relation to any activity on the Lands that is or would result in non-compliance with this Agreement and the Owner agrees to immediately cease such activity upon receipt of the Stop Work Order;
- (g) the Owner is fully responsible for ascertaining and obtaining:
 - (i) all governmental approvals (including federal and provincial approvals) required in connection with the Development; and
 - (ii) all third-party licenses, rights of way, easements and agreements necessary in connection with the Development;

and the City has made and makes no warranties or representations as to the Owner’s responsibilities with respect to other governmental approvals or third party

requirements.

1.5 City Acknowledgements

Notwithstanding 1.4(g), the City acknowledge and agree that it will:

- (a) apply to MOTT for the required permit for all stormwater works, right of ways or easements required for the Parry Place crossing (the “**MOTT Crossing Permit**”) based on the designs provided to it by the Owner in accordance with section 2.11(b), along with any other information required by MOTT in order to obtain the MOTT Crossing Permit; and
- (b) provide the Owner with any feedback or conditions identified by MOTT as part of the MOTT Crossing Permit approval process.

1.6 Donative intent/No restitution

- (a) The Owner acknowledges its intent to voluntarily grant to the City and the public the amenities and public benefits forming part of the Development and contemplated in this Agreement. The Owner acknowledges that the City has the authority to receive voluntary contributions pursuant to section 192(h) of the *Community Charter*.
- (b) The amenities granted pursuant to this Agreement (including transfer of interests in land contemplated herein) in no way means that the City has pre-approved or guaranteed that any Subdivision would be approved, or any Permit would be issued.
- (c) The Owner confirms that it has sought legal advice in connection with entering into this Agreement.
- (d) The Owner will not seek restitution in connection with any amenities or benefits granted or agreed to pursuant to this Agreement and will not commence, advance or support any legal proceedings to recover any portion of the monies or the lands or interests in land or seek restitution in respect to any other amenities or benefits contemplated in this Agreement. If the Owner institutes any such proceedings, the City may provide this Agreement (including this section 1.6) to Court as a full and complete answer.

1.7 Consequential agreements

This Agreement contemplates the Owner entering further covenants, rights of way, easements and other Agreements with the City. In the event of a conflict between this Agreement and a consequent agreement on a specific matter, the consequential agreement will govern.

1.8 Municipal consultants and consultations

- (a) The City may, from time to time, engage one or more consultants and legal counsel to assist it with the review, inspection, assessment and consideration of the Development and aspects thereof. The Owner will reimburse the City for the cost of consultants and legal counsel, provided that the City will advise the Owner in advance of its intention to retain a consultant and the anticipated cost.

- (b) The City may, in its discretion, consult with other governmental authorities in connection with any matter it considers necessary and may require the Owner to deliver copies of various reports and documents contemplated in this Agreement to other governmental authorities for review and comment.

2. **SECTION 219 OF THE LAND TITLE ACT**

2.1 **Section 219 Covenant - Grant**

The Owner hereby covenants and agrees with the City, as a covenant in favour of the City pursuant to Section 219 of the *Land Title Act*, it being the intention and agreement of the Owner that the provisions in this Agreement be annexed to and run with and be a charge upon the Lands and that the Lands will be subdivided, built and used only in strict compliance with the terms and conditions of this Agreement.

2.2 **Density Provisions in the Rezoning Bylaw**

The parties acknowledge and agree that the Master Plans have been prepared in contemplation that the Development will consist of the maximum density permitted by the Rezoning Bylaw, being a total of 330 dwelling units. It is the intention of the parties that confirmation of servicing capacity will ultimately govern the final build out of the Development across all Phases, and the requisite municipal servicing.

2.3 **No Subdivision**

Without limiting the applicability of any of bylaw of the City, the Lands will not be Subdivided in any manner except as shown on the Conceptual Lot Layout 2025 and the Owner acknowledges and agrees that it will not request final approval of Subdivision nor will the City be obligated to approve a final Subdivision unless the proposed Subdivision has met the applicable requirements in the Master Plans, including the Phasing Plan, and is consistent with the Development Particulars contemplated herein. Nothing in this clause shall be interpreted as preventing the parties from agreeing to an amendment to this Agreement to facilitate a different configuration for Subdivision of a Phase than the one shown on the Conceptual Lot Layout 2025, provided that the differently configured Subdivision Plan continues to achieve the intention of the Master Plans and the Development Particulars contemplated herein.

2.4 **No Build**

Subject to section 2.5 [*Site Preparation Work*], notwithstanding that the Owner may be entitled:

- (a) the Lands will not be built on, constructed or developed in any manner, including in connection with the Development;
- (b) the Owner will not apply for any Building Permit in connection with any development on the Lands, including the Development; and
- (c) the City will have no obligation to review any Building Permit applications, carry out any inspections, or issue any Permit,

until the Development Particulars applicable to the Phase have been completed to the satisfaction of the City.

2.5 Site Preparation Works

Restrictions in section 2.4 do not apply to Site Preparation Works, provided that, where required under the Official Community Plan, an EDP has been obtained for the Site Preparation Works.

2.6 Indemnity

As an indemnity pursuant to section 219(6) of the *Land Title Act*, the Owner will indemnify the City against all Claims and Expenses arising out, in any way related to, or that would not or could not be sustained but for, the following:

- (a) any decision made by the City in respect to:
 - (i) reviewing, accepting or approving the design specification, materials and methods for construction of the Development; and
 - (ii) inspecting the Development;
- (b) this Agreement, including, but not limited to, the exercise by the City of any rights granted in this Agreement, or any restrictions imposed pursuant to this Agreement;
- (c) the Owner complying with this Agreement;
- (d) the Owner defaulting on its obligations under this Agreement;
- (e) the approval or rejection by the City of any Permit in respect of the Development pursuant to this Agreement;
- (f) the approval or rejection by the City or the Approving Officer of any Subdivision of the Lands pursuant to this Agreement;
- (g) the Owner failing to obtain, or breaching the conditions of, any provincial or federal approval necessary in connection with the Development;
- (h) the Owner failing to obtain, or breaching the conditions of any third party license or agreement necessary in connection with the Development; and
- (i) any impact of the Development on adjacent lands,

except if resulting from a negligent action or omission by the City, or any of its employees, agents, contractors or persons for whom the City is at law responsible.

2.7 Survival of indemnity

The indemnity and release in this Part 2 will survive the expiration or the earlier termination of this Agreement and the release of this Agreement from title to the Lands.

2.8 Contribution toward the City's legal fees

Despite any other provision of this Agreement, forthwith upon a written request by the City, the Owner will reimburse the City for all reasonable legal fees and LTO charges and disbursements incurred by the City in connection with the drafting, negotiating and registering in the LTO this Agreement and all consequential agreements contemplated herein.

2.9 Process for Configuring Development

The City and the Owner acknowledge and agree with each other that:

- (a) prior to any Permits being issued for Phase 1, the Owner will:
 - (i) file the Consolidation Plan with the LTO;
 - (ii) obtain an EDP;
 - (iii) provide to the City information on:
 - (A) the construction access proposed for Phase 1, and, if necessary because a Subdivision of Phase 2 proceeds prior to the registration of the bare land strata Subdivision for Phase 1, the steps that the Owner has taken to preserve this construction access; and
 - (B) the final access from Phase 1 to a public highway.
- (b) prior to any Permits being issued or approval of Subdivision for Phase 2, the Owner will undertake the Development Particulars applicable to Phase 2; and
- (c) prior to any Subdivision approval or Permits being issued for any Other Phases, the Owner will undertake the Development Particulars applicable to the Other Phases in accordance with the Master Plans, regardless of the sequencing of the phasing.

2.10 Dedication of Parkland and Trails

- (a) The City and the Owner have agreed that the Parkland to be dedicated for the Lands will be located generally as shown in the Lannan Parks Master Plan.
- (b) The Owner acknowledges and agrees it will not be granted Subdivision approval for a Phase unless the Owner has dedicated the Parkland and trails shown in the Lannan Parks Master Plan for that Phase, except that:
 - (i) the Owner agrees that the Parkland dedication must occur prior to the final Phase given that the Parkland in the Lannan Parks Master Plan is concentrated in in the southern portion of the Lands; and
 - (ii) the trails will be provided in a manner that maintains connectivity between existing trail networks, regardless of the Phase being developed, and the City may reasonably require the provision of trails outside of the Phase being developed in order to maintain such connectivity.
- (c) If Parkland dedicated in a Phase is less than 5% of the total area of the Phase, the Owner and the City must enter into an agreement providing for the date on which the land or payment will be provided in accordance with section 510(9) of the *Local Government Act*.
- (d) Section 565 of the *Local Government Act* will govern deductions from the development cost charges that are payable with respect to the Development where the Owner has improved any Parkland that is part of the Lands.

2.11 Stormwater Management

- (a) The City and the Owner have agreed that the stormwater management for the Lands will be provided for in accordance with the Preliminary Stormwater Management Master Plan.
- (b) The Owner acknowledges and agrees that it will not be granted Subdivision approval for Phase 2 unless:
 - (i) the MOTT Crossing Permit has been obtained from MOTT as described in section 1.5;
 - (ii) the Owner has constructed the infrastructure described in approved the MOTT Crossing Permit to the satisfaction of MOTT or the Owner's obligation to provide these works is otherwise secured to the satisfaction of MOTT; and
 - (iii) the larger downstream detention pond described in the the Preliminary Infrastructure Master Plan has been constructed or the Owner's obligation to provide this larger downstream detention pond as part of Phase 2 is secured by way of an agreement contemplated by the SDS Bylaw.
- (c) The Owner acknowledges and agrees that it will not be granted Subdivision approval or Permit for any Phase unless the stormwater management system works and services described in the Preliminary Stormwater Management Master Plan:
 - (i) are included in the Phase or the Owner's obligation to include the stormwater works and services in that Phase is secured by way of an agreement contemplated by the SDS Bylaw;
 - (ii) that is outside the boundaries of the Phase and that is intended to receive stormwater to be conveyed beyond the boundaries of the Phase has been constructed with the capacity described in the Preliminary Stormwater Management Master Plan and is capable of receiving the anticipated stormwater from the Phase;
 - (iii) are protected by easements for overland drainage or other acceptable methods for the conveyance of stormwater along the pathways and in the volumes described in the Preliminary Stormwater Management Master Plan; and
 - (iv) will function as described in the Preliminary Stormwater Management Master Plan in the opinion of a professional engineer.

2.12 Water and Sanitary Sewer

- (a) The City and the Owner have agreed that water and sanitary sewer services for the Lands will be provided for in accordance with the Preliminary Infrastructure Master Plan.
- (b) The Owner will provide to the City a Water Plan and a Sewer Plan for each Phase prepared by a professional engineer which meets the City's Subdivision requirements for the Lands.

- (c) The Water Plan and Sewer Plan must be reviewed and accepted by the City and the Comox Valley Regional District before the City will approve any Subdivision application in respect of any Lands or a portion thereof.
- (d) The Owner will not obtain an Occupancy Permit for any Phase, unless and until the Owner has constructed and installed, at its sole cost, all the necessary works and services contemplated in the Water Plan and Sewer Plan for such Phase or made arrangements satisfactory to the City for the construction of such works, through an agreement or provision such as a letter of credit, on terms satisfactory to the City, acting reasonably.

2.13 Building Requirements

The Owner acknowledges and agrees that for each Phase it will:

- (a) include solar-ready, drought resistant landscaping and native plants for all Part 9 structures, as defined by the Building Bylaw; and
- (b) install sufficient conduit from the electrical panel to electric vehicle charge locations in each multi-family Building constructed on the Lands, so that a Building's owners can upgrade the systems as necessary to meet the expansion of the electric vehicle charging grid.

2.14 Community Amenity Contribution

The Owner acknowledges and agrees that it will:

- (a) contribute \$250,000.00 at time of Subdivision application of Phase 1 to the Affordable Housing Fund;
- (b) contribute \$250,000.00 at time of Subdivision application for Phase 2, to the Parks, Recreation, Cultural and Senior's Facilities Amenity Reserve Fund; and
- (c) provide to the City, to be located at the City's discretion, one (1) Dawn to Dawn Modular Home or the equivalent value prior to a Permit for occupancy for Phase 1.

2.15 Transportation

The Owner acknowledges and agrees that it will:

- (a) prior to Phase 1, satisfy the City that every proposed building site within Phase 1 can lawfully and in perpetuity access a public highway that has been or will be dedicated prior to any Development, other than Site Preparation Works, within Phase 1;
- (b) use the Preliminary Infrastructure Master Plan to guide the development of the highways and active transportation works within the Lands and to inform the manner in which it phases the Development;
- (c) unless otherwise accepted by the City, prior to Phase 2:
 - (i) dedicate the continuation of Royal Vista Way, Lannan Road and Road "A" or provide a statutory right of way to preserve access to these planned public

highways over that portion of the Lands outside of the Subdivision Plan for Phase 2;

- (ii) dedicate the terminus of Britannia Way or provide a statutory right of way to preserve dedication of the terminus of Britannia Way; and
- (d) provide or secure the active transportation connections generally shown in the Lannan Parks Master Plan and the Transportation Master Plan to the City's standards.

2.16 Protection of the Natural Environment

- (a) The City and the Owner have agreed that the ESA on the Lands is generally as shown in the Environmental Master Plan.
- (b) The Owner acknowledges and agrees it will not be granted Subdivision approval or Permit for a Phase unless:
 - (i) an EDP has been obtained and the EDP guidelines in the Official Community Plan have been met for the Phase;
 - (ii) any ESAs in the Phase are clearly flagged to ensure their protection and to prevent encroachment apart from crossings (trails and access);
 - (iii) any watercourses in the Phase have received the necessary provincial approvals described in the Environmental Master Plan;
 - (iv) vegetation in the Phase is retained or replanted in accordance with the Environmental Master Plan;
 - (v) invasive species present in the Phase are removed and mitigation measures to control and minimize the spread of invasive species are implemented in accordance with the Environmental Master Plan; and
 - (vi) mitigation measures are implemented to minimize the impacts of construction activities for the Phase on wildlife and wildlife habitat in accordance with the Environmental Master Plan.
- (c) Notwithstanding section 2.16(b), the Owner acknowledges and agrees that it may be required to obtain this EDP in order to carry out Site Preparation Work that is consistent with the Official Community Plan's description of activities that require an EDP.
- (d) Any ESA to be dedicated to the City as part of the protection of the natural environment may not be included in the calculation of Parkland dedication.

3. RELEASE OF THIS AGREEMENT FROM TITLE TO THE LANDS

3.1 Release of this Agreement

The City will discharge this Agreement from Phase 1 immediately before registration of the Subdivision Plan creating Phase 1 and immediately after the registration of the Preliminary Consolidation Plan, for those portions of the parcels referenced in Recital A that are not subject to this Agreement. Thereafter,

the City will discharge this Agreement, on a phase by phase basis from title to the Lands upon fulfilment, as applicable, of the Development Particulars and the Schedules referenced therein, to the satisfaction of the City, provided that:

- (a) the City has no obligation to discharge this Agreement until a written request is received from the Owner, which request includes the registrable form of release of the instrument charging the Lands with this Agreement;
- (b) the cost of preparing the release and the cost of registering the release in the LTO are paid by the Owner;
- (c) the City has reasonable time to execute the release;
- (d) the release is without prejudice to the indemnity in section 2.6.

Nothing in this section will prevent the City from issuing a Subdivision approval, Permit or other approval prior to the execution and delivery of the release by the City to the Owner and is not fully registered in the LTO.

4. SALE OF THE LANDS

4.1 Assignment at sale

The Owner will not sell, transfer or otherwise dispose of any interest in the Lands, or any part thereof, to any person, trust, corporation, partnership or other entity (the “**Transferee**”) unless the Owner includes in any agreement relating to such sale, transfer or disposition a covenant binding upon the Transferee in favour of the City whereby the Transferee acknowledges this Agreement and assumes and agrees to observe and perform all the terms of this Agreement. The restriction herein does not apply to a disposition of interest by way of mortgage and/or assignment of rents where the mortgagee and/or assignee has first granted in favour of the City a priority agreement in respect to this Agreement, in the form satisfactory to the City.

5. GENERAL

5.2 Severance

If any portion of this Agreement is held invalid by a court of competent jurisdiction, the invalid portion will be severed and the decision that it is invalid will not affect the validity of the remainder of this Agreement.

5.3 Default and remedies

- (a) If the Owner fails to comply with any of its obligations under this Agreement, then the City may notify the Owner in writing (at the address shown on title to the Lands in the LTO at the relevant time) that the Owner is in default, describe the default, and instruct the Owner to correct the default within 15 days of receiving the notice.
- (b) If the correction of a default cannot be completed within 15 days of receiving the notice, the Owner will only be in compliance with this Agreement and the City’s instructions if the Owner:
 - (i) immediately takes all reasonable steps to begin to correct the default;

- (ii) provides the City with a schedule reasonably acceptable to the City for such correction; and
 - (iii) completes the correction in accordance with such schedule.
- (c) Notwithstanding the foregoing, no notice is required in the event of a real or a reasonably perceived emergency.
- (d) If the Owner has not corrected the default as contemplated in this section 5.2, the Owner will be deemed to be in default of this Agreement. Damages are an inadequate remedy for the City; and the City is entitled to seek an order for specific performance, or a prohibitory or mandatory injunction in order to compel performance of the obligations in this Agreement.
- (e) 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.
- (f) The City may at all reasonable times enter onto the Lands, including buildings and structures thereon, to ascertain the Owner's compliance with this Agreement.

5.4 **Runs with the Lands**

- (a) The covenants set forth herein will charge the Lands pursuant to section 219 of the *Land Title Act* and will run with the Lands and bind the Lands and every part or parts thereof, and will attach to and run with the Lands and each and every part to which the Lands may be divided or subdivided, whether by subdivision plan, strata plan or otherwise.
- (b) The covenants set forth herein will charge the Lands, and every portion thereof, and bind the Lands and all future owners of the Lands, until discharged.
- (c) Unless expressly stated otherwise, and without limiting section 4.1, any transferee of the Lands will automatically be deemed, by accepting ownership, to have assumed all obligations of the Owner under this Agreement and to have agreed with the then Owner of the Lands to do all things reasonably required to carry out the intention of this Agreement.

5.5 **Limitation on the Owner's Obligations**

The Owner will not be liable for any breach of any covenant, promise or agreement herein with respect to any portion of the Lands conveyed or otherwise disposed of, occurring after the Owner has ceased to be the Owner thereof.

5.6 **Further Assurances**

The parties will execute and do all such further deeds, acts, things and assurances that may be reasonably required to carry out the intent of this Agreement.

5.7 **Waiver**

Waiver by the City of a default by the Owner will be in writing and will not be deemed to be a waiver of any subsequent or other default.

5.8 **Enurement**

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

5.9 **Priority**

The Owner will take all steps necessary to ensure that this Agreement is registered in the LTO in priority to all charges and encumbrances which may impair the covenants granted in this Agreement and, in any event, in priority to all financial charges.

5.10 **Counterparts and Electronic Delivery**

This Agreement may be executed in any number of counterparts and delivered via e-mail, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument, provided that any party delivering this Agreement via e-mail will deliver to the other party an originally executed copy of this Agreement forthwith upon request by the other party.

5.11 **Dispute Resolution**

- (a) For the purpose of this section, “dispute” means a disagreement arising out of or in connection with this Agreement, or in respect of any defined legal relationship associated with it or derived from it, and includes any failure to reach agreement where an agreement is required.
- (b) In the event that a dispute shall arise from the Agreement which cannot be settled by the City and Owner negotiating in good faith, then both parties hereby agree to appoint, at a cost to be borne equally between the parties, a mediator, who shall forthwith act to resolve any outstanding dispute between the parties.
- (c) In the event that the parties cannot mutually agree on the appointment of a mediator, or the dispute cannot be settled through the process of mediation, then the parties agree to submit the outstanding dispute to a person or organization duly qualified as a commercial arbitrator.
- (d) Both parties agree that the decision of the arbitrator shall be final and both parties agree to forever relinquish any and all rights to pursue a judicial settlement of any and all disputes in a court of law.
- (e) Dispute resolution shall be conducted in the jurisdiction of the principal place of business of the City unless otherwise agreed.

5.12 **Governing Law**

This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the City and Owner hereby attorn to the jurisdiction of the Courts of British Columbia.

5.13 **Notices**

All notices required to be given under this Agreement will be given in writing, and will be delivered personally, by courier or facsimile transmission, addressed as follows to the respective Representatives:

If to the Owner

SILVERADO LAND CORP.

399 Clubhouse Drive
Courtenay, British Columbia V9N 9G3

If to the City:

City of Courtenay

830 Cliffe Avenue
Courtenay, British Columbia V9N 2J7
Attention: Director of Development Services

IN WITNESS OF THIS AGREEMENT the City and the Owner have executed this Agreement by signing the "Form C - General Instrument - Part 1" or "Form D - Executions Continued" attached hereto.