

## TERMS OF INSTRUMENT - PART 2

---

---

**RECITALS:**

- A. The Transferor (the “**Owner**”) is the registered owner in fee-simple of those lands in the City of Grand Forks, in the Province of British Columbia, described in Item #2 of the Form C attached to and forming part of this Agreement (the “**Lands**”).
- B. The Transferee is the City of Grand Forks (“**Transferee**” or “**City**”).
- C. The Owner has submitted development applications to the City to develop multiple-family residential units in several buildings on the Lands (the “**Development**”), and the Owner has requested the closure of the laneway bisecting the Lands (the “**Bisecting Road**”) and consolidation of Bisecting Lane with the Lands to facilitate that Development. In support, the Owner has agreed to rights of way (Emergency Vehicle SRW/Covenant and Utilities SRW/Covenant) to the benefit of the City, as part of the compensation for closure and transfer to the Owner of the Bisecting Road.
- D. This Agreement relates to the City services adjacent the northwestern portions of the Lands. To facilitate the on-going use, maintenance, installation and replacement of water and sewer lines running near the northern portion of the Lands for the collection, transmission and disposal of potable water, run-off water, storm drainage and sewer waste along the sewer main and water main, the Owner acknowledges that it is in the public interest that a statutory right of way for access to and maintenance of the water and sewer lines be granted and the Owner has agreed to grant this blanket Statutory Right of Way and Covenant over the Lands to the City on the terms below, and in accordance with sections 218 and 219 of the *Land Title Act*, and the City has accepted and agreed to registration of this Statutory Right of Way and Covenant (collectively the “**Agreement**”).
- E. Section 218 of the *Land Title Act*, R.S.B.C. 1996, c. 250 enables the Owner to grant in favour of the City an easement without a dominant tenement to be known as a Statutory Right of Way.
- F. This Statutory Right of Way is necessary for the operation and maintenance of the City's undertaking.
- F. Section 219 of the *Land Title Act* gives authority for a covenant and indemnity, whether of a negative or positive nature, to be registered against the Lands and granted in favour of the City with provisions:
- in respect of the use of land or the use of a building on or to be erected on land;
  - that land is to be built on in accordance with the covenant;
  - that land is not to be built on or subdivided except in accordance with the covenant;
  - that land is not to be used, built on or subdivided;
  - that parcels of land designated in the covenant and registered under one or more indefeasible titles are not to be sold or otherwise transferred separately; and
  - that land or a specified amenity in relation to it be protected, preserved, conserved,

maintained, enhanced, restored or kept in its natural or existing state in accordance with the covenant and to the extent provided in the covenant.

**NOW THEREFORE** in consideration of the payment of the sum of \$10.00 by the City to the Owner (receipt and sufficiency acknowledged), and as a component of a land exchange agreement between the Owner and the City that will include the closure of part of the laneway bisecting the Lands and consolidation of this portion of the laneway with the Lands, the mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration, the parties covenant and agree as to the following, including under sections 218 and 219 of the *Land Title Act*:

**PART 1 – S.218 STATUTORY RIGHT OF WAY (“SRW”)**

1. The Owner, for themselves, their heirs, executors, administrators, successors and assigns, hereby grants and conveys in perpetuity and at all times to the City, for use by the City, its officials, employees, contractors, subcontractors, agents, licensees, invitees and permittees, with or without invitation, a blanket statutory right of way (the “**Statutory Right of Way**”) and the full, free and uninterrupted right, licence, liberty, privilege, easement and right of way in common with the Owner on, over, through, and under the Lands, to with or without machinery, vehicles, equipment and materials, enter over, on, in, across, and under the Statutory Right of Way to:
  - (a) conduct surveys and examinations;
  - (b) construct, install, operate, maintain, repair, clean, clear, protect, cover with soil, alter, relocate, renew, inspect and replace power poles, transmission lines, pipes, culverts, retaining walls, wing walls, manholes, meters, mains, pumps, valves, drains, chambers, gates, connections, alarms, ditches and similar equipment and associated works or structures, or any of them, together with all ancillary attachments, fittings, access points, and appurtenances (all of which are collectively called the “**Works**”) for the purpose of conveying, draining, containing, protecting, metering and disposing water, sewage, liquid waste, and storm water in connection with the provision of water, sanitary sewer and storm sewer service to the Lands and other properties within the City;
  - (c) bring all workers, vehicles, machinery, equipment, materials, tools and supplies on to the Statutory Right of Way, and use them that the City requires or desires for the purposes described in this Section 1;
  - (d) disturb, dig up, excavate, remove, or replace soil and the surface of the Statutory Right of Way and excavate it for the purposes described in this Section 1;
  - (e) to clear the Statutory Right of Way and keep it clear of anything which, in the opinion of the City constitutes or may constitute an obstruction to the use of the Statutory Right of Way or the Works; and
  - (f) do anything else on, over, or under the Statutory Right of Way that the City considers necessary or desirable in connection with the rights granted herein.

2. The City covenants and agrees with the Owner that the City:
  - (a) will not bury debris or rubbish of any kind in excavations or backfill and will remove shoring and like temporary structures as backfilling proceeds;
  - (b) will, as far as reasonably necessary, carry out the repair, maintenance, cleaning, clearing, protecting, replacing and operating of the Works in a proper and workmanlike manner;
  - (c) will exercise the utmost care not to damage the Lands, and if the City should cause any such damage, the City shall, at its sole cost and expense, promptly restore any damage to the Lands, to as close to their pre-damaged condition as reasonably practical up to a condition consistent with the City's normal standards, but is not required to restore or replace any structures installed or constructed in or over the Statutory Right of Way except for the fencing installed, situated and constructed in accordance with section 8(b) of this Agreement;
  - (d) will exercise the utmost care not to damage the fencing or enclosures installed on the Lands, and if the City should cause any such damage to a post and rail fence installed, situated and constructed in accordance with section 8(b) of this Agreement, the City shall, at its sole cost and expense, promptly restore any damage to the post and rail fence to as close to their pre-damaged condition as is reasonably practical, up to a reasonable cost and quality, which will include use of similar materials where reasonably practical and sufficiently cost-effective, all at the sole discretion of the City's public works manager;
  - (e) will only be responsible to replace or repair damage it causes to a post and rail fence that is installed, situated and constructed in accordance with section 8(b) of this Agreement, and will not be responsible for repairing or replacing any other type or form of fencing or related improvement; and
  - (f) will not use or permit the Statutory Right of Way Area to be used for any purpose other than for the purposes specifically contemplated in Section 1 of this Agreement.
3. No right of access by the general public to any portion of the Lands is conveyed by this Agreement.
4. No part of the title in fee-simple to the soil of the Statutory Right of Way shall pass to or be vested in the City under or by virtue of the granting by the Owner to the City of these presents, and the Owner may fully use and enjoy all the Lands of the Owner, subject only to the rights and restrictions contained in this Agreement.

### **Conversion of Agreement to a Specific Statutory Right of Way**

5. The City and the Owner agree that the Works will be generally located within the area of the Lands, adjacent to and running parallel along the the northern parcel line between the eastern and western parcel lines, that is approximately shown in green (the "**Works Area**") on the sketch plan titled "SITE PLAN", and dated July 2021, a copy of which is attached to this Agreement as Schedule "A" (the "**Works Area Plan**"), and the City agrees

to generally limit the rights granted by this Agreement to the Works Area, and the parties further agree that any uncertainty regarding the Works Area is to be resolved in favour of the City given this blanket charge.

6. The City and the Owner covenant and agree that the Statutory Right of Way will, following further surveying by the City, be converted to a specific statutory right of way limited to the area of the Works Area. The Owner shall undertake further surveying and prepare a survey plan outlining and identifying the specific right of way area that is substantially in accordance with the area of the Works Area, and register such plan on the title of the Lands.
7. Upon conversion to a specific statutory right of way, references to the Lands shall, as applicable, be interpreted as references to the Statutory Right of Way or the Works Area, as appropriate to give full effect to rights granted to the City in this Agreement.

## **PART 2 – S.219 COVENANT**

8. The Owner covenants and agrees with the City that the Owner:
  - (a) will not build or use the Development on the Lands in a manner that destroys, harms or requires the removal of the Works;
  - (b) will not construct or install any fencing within the Statutory Right of Way except for post and rail fencing that is installed, constructed, maintained, situated and designed in accordance with the following:
    - (i) the posts must be installed, constructed and designed so that they can be easily removed and replaced, including that concrete or similar materials must not be used to construct, affix or attach the posts or any other component of the fencing to the Lands,
    - (ii) the rails must be installed, constructed and designed so that they can be easily removed, dismantled, replaced and reassembled,
    - (iii) fencing and posts must not be located within twenty-four (24) inches of any water main pipe and must be situated, installed and designed to ensure that such pipes can be accessed by the City for normal water main repair and maintenance activities without causing significant damage to the fencing or requiring significant sections of the fencing to be dismantled,
    - (iv) the Owner must notify the City prior to any fence maintenance, repair, replacement or removal that could interfere with or put the water main or any pipe at risk of damage, and
    - (v) the Owner must not construct or install any fencing that differs from the design, location, material or construction allowed under this section 8(b), unless the Owner first receives approval from the City, which approval may be granted or declined at the City's sole discretion;
  - (c) will be solely responsible for the cost of replacing or repairing any fencing that is not designed, situated, constructed and installed in accordance with section 8(b)

of this Agreement, including if such damage is caused by the City in the course of the City's normal water main repair and maintenance activities;

- (d) except for the temporary exemptions in Section 9 of this Agreement, will not, and will not permit any other person, to erect, place, install or maintain any building, structure, addition to a building or structure in, on, over or under any portion of the Lands where the Works are located;
  - (e) will not do or permit to be done any act or thing which in the opinion of the City might interfere with, injure, impair the operating efficiency of, or obstruct access to or the use of the Statutory Right of Way or the Works by the City or any of its agents, workers or contractors;
  - (f) will not plant, install or maintain any trees within the Statutory Right of Way, without the express written consent of the City (which may be reflected in Development Permits, Building Permits or correspondence from City Staff);
  - (g) will not construct or install any concrete, pavement, asphalt or other hard landscaping in, on, over or under any portion of the Lands where the Works are located without prior written permission of the City (which may be reflected in Development Permits, Building Permits or correspondence from City Staff);
  - (h) will trim or, if necessary, cut down any tree or other growth on the Lands which in the opinion of the City constitutes or may constitute a danger or obstruction to those using the Statutory Right of Way or the Works;
  - (i) will allow the City, its officials, employees, contractors, subcontractors, agents, licensees, invitees, and permittees to enter upon the Statutory Right of Way as provided in Section 1 of this Agreement, and the Owner will not interfere with in any way or prevent any such person coming on to the respective area for the purposes permitted by this Agreement;
  - (j) will from time to time and at all times at the reasonable request of the City do and execute or cause to be made, done or executed any further and other lawful acts, deeds, things, devices, conveyances and assurances in law required to ensure the City of its rights under this Agreement; and
  - (k) will permit the City to peaceably hold and enjoy the rights granted by this Agreement.
9. In recognition that the Development has yet to be constructed and the Bisecting Road has yet to be transferred to the Owner (and this Agreement does not alleviate statutory requirements and the City's discretionary decision-making in that regard), the parties agree that, notwithstanding the restrictions and requirements of this Agreement, the Owner is not restricted in the placement of temporary buildings and structures, and equipment and materials, related to and during the construction of the Development, provided there is no damage, or substantial risk of damage, to City Works.
10. The Owner further covenants and agrees that the City, and any of its officers or employees, may but is not obligated to inspect the Statutory Right of Way for the purpose

of ascertaining compliance with this Agreement.

### Registration

11. The restrictions and requirements in this Agreement are covenants running with the Lands in favour of the City and intended to be perpetual, and shall continue to bind all of the Lands when subdivided. For greater certainty future owners of the Lands, or portions thereof, shall be considered the Owner under this Agreement.
12. At the Owner's sole cost, the Owner must do everything necessary to secure priority of registration and interest for this Agreement over all encumbrances of a financial nature on the Lands.
13. The Owner agrees to execute all other documents and provide all other assurances necessary to give effect to the covenants contained in this Agreement.

### General

14. The Owner and City agree that this Agreement shall be interpreted in accordance with the definitions in the City's Zoning Bylaw, as amended from time to time.
15. The Owner covenants and agrees for itself, its heirs, executors, successors and assigns, that it will at all times perform and observe the requirements and restrictions set out in this Agreement.
16. It is mutually understood, acknowledged and agreed by the parties that the City has made no representations, covenants, warranties, guarantees, promises or agreements (oral or otherwise) with the Owner other than those contained in this Agreement.
17. The Owner acknowledges that the City does not represent to the Owner or to any other person that any future application for subdivision of the Lands by the Owner will be approved.
18. Nothing contained or implied in this Agreement:
  - (a) prejudices or affects the rights, powers or discretion of the City in the exercise of its functions under any public or private statutes, bylaws, orders and regulations, all of which may be fully and effectively exercised in relation to the Lands as if the Agreement had not been executed and delivered by the Owner;
  - (b) imposes any legal duty or obligation, including any duty of care or contractual or other legal duty or obligation on the City to enforce this Agreement or the breach of any provision in this Agreement; or
  - (c) imposes any public law duty, whether arising from the principles of procedural fairness or the rules of natural justice on the City with respect to its exercise of any right or remedy expressly provided in this Agreement or at law or in equity.
19. The parties agree that this Agreement shall not be modified or discharged except in accordance with the provisions of section 219(9) of the *Land Title Act*.

20. The Owner covenants and agrees that the City may withhold development permits, building permits and other approvals related to the use, building or subdivision of land as necessary to ensure compliance with the covenants in this Agreement, and that the issuance of a permit or approval does not act as a representation or warranty by the City that the covenants of this Agreement have been satisfied.
21. The waiver by a party of any breach of this Agreement or failure on the part of the other party to perform in accordance with any of the terms or conditions of this Agreement is not to be construed as a waiver of any future breach or continuing failure, whether similar or dissimilar, and no waiver is effective unless it is written and signed by both parties.
22. If any part of this Agreement is held to be invalid, illegal or unenforceable by a court having the jurisdiction to do so, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that holding or by the severance of that part.
23. The Owner acknowledges having been directed to obtain independent legal advice prior to executing this Agreement, and the Owner agrees and acknowledges that they have read the terms of this Agreement and fully understood all of the terms and conditions of this Agreement and its impact on the Lands.
24. Any notice required or permitted to be given in connection with this Agreement will be in writing and delivered personally or sent by prepaid express mail to the applicable addresses set out above in the Form C attached to, and forming part of, this Agreement. If notice is delivered personally, it will be considered given when delivered. If notice is mailed, it will be considered given five days after mailing by deposit at a Canada Post mailing point or office. A party may only change their address for delivery under this section by notice to the other party in accordance with this section.
25. Whenever the plural, singular, masculine or neuter is used herein, the same shall be construed as including the plural, singular, feminine, body corporate or politic unless the context requires otherwise.
26. Where there is a reference to an enactment of the Province of British Columbia in this Agreement, that reference shall include a reference to any subsequent enactment of the Province of British Columbia of like effect, and unless the context otherwise requires, all statutes referred to herein are enactments of the Province of British Columbia.
27. This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

### **Priority Agreement**

28. 0715052 B.C. LTD., Inc. No. BC0715052 (the "**Chargeholder**"), the registered holder of charges by way of MORTGAGE and ASSIGNMENT OF RENTS against the Lands, respectively registered under No. CA9042751 and No. CA9042752 (Collectively, the "**Charges**"), agrees with the City, in consideration of the sum of Ten Dollars (\$10.00) paid by the City to the Chargeholder (receipt and sufficiency acknowledged), that the Agreement shall be an encumbrance upon the Lands in priority to the Charges in the same manner and to the same effect as if the Agreement had been dated and registered

prior to the Charges.

The Owner and the City acknowledge that this Agreement has been duly executed and delivered by the parties executing Form C attached to, and forming part of, this Agreement.

