

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 City access over and through the Lands for the use by emergency personnel and vehicles, including fire department vehicles (the “**Emergency Access Lane**”), and the Owner, acknowledging that it is in the public interest that a statutory right of way for the Emergency Access Lane through the Lands be granted, has agreed and wishes 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), the mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration (including partial compensation related the Bisecting Road), 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 and other emergency service providers, including the City’s fire department, its officials, employees, contractors, subcontractors, agents, licensees, invitees and permittees, police, ambulance and paramedics, 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, and through the Lands for the purpose of emergency access on and through the Lands, including all associated services and works (the “**Related Works and Services**”), and in connection therewith:
 - (a) to facilitate uninterrupted access of the City, including the fire department, and other emergency service providers with or without equipment, to and through the Statutory Right of Way, by motorized vehicle or on foot;
 - (b) to bring vehicles, machinery, equipment, tools and supplies on to and through the Statutory Right of Way;
 - (c) provide access to the City and allow the City to install, construct, repair, maintain, clean, clear, protect, and replace the Emergency Access Lane within the Statutory Right of Way in case of breach by the Owner;
 - (d) to access, maintain and control a locked fire gate within the Statutory Right of Way on the north side of the Lands; and
 - (e) to do anything else on or over the Statutory Right of Way that the City considers necessary or desirable in connection with the rights granted by this Agreement.
2. 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.
3. 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 of statutory requirements and the City’s discretionary decision-making in that regard), the parties agree that the access rights provided in this Agreement will not be exercised by the City until after the first occupancy permit for a development on the Lands is issued.

Conversion of Agreement to a Specific Statutory Right of Way

4. The City and the Owner agree that an Emergency Access Lane will be generally located in a corridor area generally running southwest from the eastern lot line located adjacent to 21st Street and curving northwestward to the northern lot line of the Lands,

approximately as shown shaded in green on the sketch plan attached to this Agreement as Schedule "A" (the "**Emergency Access Lane Area Plan**"), and the parties further agree that any uncertainty regarding the Emergency Access Lane is to be resolved in favour of the City given this blanket charge.

5. The City and the Owner covenant and agree that the Statutory Right of Way will, following further surveying, be converted to a specific statutory right of way limited to the area of the Emergency Access Lane. The Owner, at their sole cost 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 Emergency Access Lane, and register such plan on the title of the Lands.
6. 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 Emergency Access Lane, as appropriate to give full effect to rights granted to the City in this Agreement.

PART 2 – S.219 COVENANT

7. The Owner covenants and agrees with the City that the Owner:
 - (a) will at their sole cost construct, install, pave, demarcate and maintain, as part of the Development, an Emergency Access Lane with asphalt, pavement, concrete or a comparable hard surfacing, any signage requested or required by the City for the Emergency Access Lane, and any of the Related Works and Services required by City bylaws;
 - (b) will not, and will not permit any other person, to erect, place, install or maintain any building, structure, addition to a building or structure, over any portion of the Lands where the Emergency Access Lane is located;
 - (c) will not do or permit to be done any act or thing which in the opinion of the City might interfere with, injure, impair or obstruct access to or through the Statutory Right of Way, or the use of the Statutory Right of Way or the Related Works and Services by the City, including the fire department or other emergency service providers, or any of its agents, workers or contractors;
 - (d) will not plant, install or maintain any trees within the Statutory Right of Way that may interfere with or obstruct the Emergency Access Lane;
 - (e) will trim or, if necessary, cut down any tree or other growth on the Lands which in the opinion of City staff constitute or may constitute a danger or obstruction to those using the Statutory Right of Way;
 - (f) will allow the City, including the fire department, its officials, employees, contractors, subcontractors, agents, licensees, invitees, permittees, and other emergency service providers, 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;

- (g) 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
 - (h) will permit the City to peaceably hold and enjoy the rights granted by this Agreement.
8. 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

- 9. 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.
- 10. 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.
- 11. 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

- 12. 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.
- 13. 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.
- 14. It is mutually understood, acknowledged and agreed by the parties that the City and the Subdivision Approving Officer have made no representations, covenants, warranties, guarantees, promises or agreements (oral or otherwise) with the Owner other than those contained in this Agreement.
- 15. 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 or Subdivision Approving Officer, 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 or Subdivision Approving Officer, with respect to its exercise of any right or remedy expressly provided in this Agreement or at law or in equity.

16. 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*.
17. 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.
18. 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.
19. 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.
20. 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.
21. 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.
22. 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.
23. 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.
24. This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

Priority Agreement

25. 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.

SCHEDULE A – Emergency Access Lane Area Plan

