



McKinley Beach Amenity FAQ – updated 2023

The McKinley Beach Amenity Program is intended to provide a greater level of service and standards beyond those maintained by the City. The program serves as a funding and management mechanism to maintain high standards and property values for all owners at the McKinley Beach master planned community.

The McKinley Beach amenities program was created to maintain the many amenities and other features of the McKinley Beach community which are not located on private property and are otherwise not maintained by homeowners or the City of Kelowna.

The Amenity maintenance program has been a feature since the inception of McKinley Beach. The amenity fee program is detailed in the Sales and Purchase Contracts and Disclosure Statements provided at purchase-through the developer.

The amenity fee is additionally required through a covenant registered on every owner's title. For ease of reference, we have included an example of the amenity covenant which was registered at subdivision at the end of this FAQ.

If you have any further questions or comments regarding the amenity program or this FAQ, the McKinley Beach Sales Manager and the developer are happy to discuss with you.

1. What happens if the amenity costs are over or under the budgeted amount?

In the operating years of 2016, 2017 2018 and 2020, the master developer of McKinley Beach subsidized all deficit amounts for the amenity fee costs.

When the actual costs fall below the budget, any surplus collected will be carried forward against the following year's amenity budget.

With the community now established, any overages will also be carried forward to the following year's budget, like any surplus funds collected.

Should the amenity fee costs exceed the budget including the contingency allowance in any given year, the deficits will be applied to the next year's budget.

2. Why are some boulevards maintained through the amenity fee, but not all? Why doesn't the City of Kelowna maintain them?

Boulevards on City-standard roads are taken over by the City through a process called "substantial completion". Generally, the landscaping company who completes the boulevard warrants the plants for one year. The developer or landscaper do not maintain boulevards located on City roads when they are designed and installed to a City standard. Boulevards are required to be maintained by individual homeowners fronting that area of boulevard pursuant to the City of Kelowna Bylaw 10425. Any areas within the McKinley Beach community that are not abutting private land (green spaces are one example), utilize the amenity program to maintain such areas to the standard expected by residents.

3. How do you ensure the costs are competitive?

Third-party contractor quotes are generally priced by more than one contractor to ensure cost competitiveness. Some services are limited – for example cleaning the public washrooms located at the Beach – only one contractor would price the daily cleaning.

4. Why is the annual BC Assessment amount for my home utilized to determine my annual amenity contribution?

The covenant registered on all titles requires homes be assessed an amenity fee based on their annual BC assessment amount. For strata corporations, which pay fees based on unit entitlement, the assessments will be totalled and paid on a prorated basis of unit entitlement, like other strata-related costs are, or by assessed value of each strata lot, at the discretion of each strata corporation. The assessment-based model was adopted from master planned communities in Whistler, and like property tax, is an equitable and arms length method to determine contribution amounts. The method of calculating fees based on assessed values cannot be revised. It is contained in the covenant registered on every property owner's title, and was explained in the McKinley Beach sales process, disclosed in the sales agreement and disclosure statement and on property title at any transfer or purchase.

5. As more homes are built in the community, will the fees go down?

As more homes and development are completed, more expansive areas of the community will have amenities developed, such as trails. As of 2023, most amenities are now completed, save and except the indoor amenity building. To an extent, this will mean higher costs, but will also have a higher number of owners who will contribute. While the covenant allows for a maximum of 0.30% of the assessed value to be charged, we target to maintain assessments at or below 0.15% each year.

6. What is paid for regarding the trails? Are the amenity fees building new trails?

Trail enhancements and repairs are separate and apart from installation costs. The developer pays for all installation and up-front capital costs of all amenities, including establishing trails. Amenity fees are generally limited to maintenance, repair, and enhancements only after the developer installs an amenity.

7. McKinley Beach allows public access to the lakefront. Why do we maintain it and not the City?

The beach maintenance and cleaning we perform are supplemental to City cleaning and maintenance. The City of Kelowna rarely performs beach maintenance at McKinley Beach. Garbage, debris from the lake, dead and fallen trees, weeding, dead animals and dog debris are all regularly cleaned by the amenity team.

8. What washrooms are included in the amenity fee? Who can use them?

There are three washrooms open to all residents and the public at the McKinley beachfront. Beachfront washroom maintenance will be carried out from May through September. We have an agreement with the City of Kelowna whereby they will cover a portion of these maintenance costs. The washrooms are installed for public use.

9. Why are McKinley Beach Lane and Arrowroot Drive maintained, and not all lanes?

McKinley Beach Lane and Arrowroot Drive provide access and parking for residents to the lakefront year-round. The beachfront and access thereto are an integral amenity to the overall community. Sweeping and snow clearing are important aspects to maintain safe and continued access for all residents. There are other lanes in the development that are utilized primarily by the residents who access their homes from it only. Conversely, McKinley Beach Lane is used by any resident who wishes to access the lakefront. McKinley Beach Lane and Arrowroot Drive are private roads, owned by the master developer to protect, maintain, and allow for parking and access to the lakefront.

10. I've heard there will be more amenities. What will they be? Where will they be located?

Many outdoor amenities in the Hilltown were completed in 2022 and include several kilometers of new hiking trails, one tennis and two pickleball courts, basketball hoops, a children's playground, and community gardens. There are a few additional amenities the developer plans to complete in Hilltown, including an indoor amenity building with gym, pool, and hot tub, as well as an outdoor field area with gardens. Beyond this, no additional amenities are planned at McKinley Beach in either the Hillside or Hilltown areas.

11. Do all developments – including single family, multifamily and rentals contribute to the amenity program?

Yes, all developments within and at McKinley Beach, including single ~~and~~ multi family, and rentals have an amenities covenant and will contribute to the amenity program.

12. Is there a resident group or council involved in the amenity program?

The amenity program is not a strata program. It is administered by the master developer, through a separate non-development company. Notwithstanding, we are happy to meet with anyone who has questions or suggestions as we have done for several years. There is an owners' association which has formed, called the "McKinley Beach Owners Group" that represents owners and is consulted annually on the amenity program.

13. What is the timing for fees each year?

Each annual amenity budget will be sent out in the spring, around March 15th. We must await the annual BC Assessments to establish the amenity fee breakdown. The individual invoices for each homeowner or strata will be sent out in the months that follow the budget.

The master developer has frequently surveyed residents with an anonymous online survey and will take that input into consideration for creating the subsequent year's amenity program and budget.

14. Why does the amenity fee pay for insurance?

Insurance is maintained to cover liability for injury on or damage to any common areas throughout the community. Insurance is also required for the amenity team vehicles. The amenity team vehicles are stored on site and used exclusively for the purposes of the amenity program.

15. If I want to see information pertaining to any costs, can I? How do I do so?

Yes, the amenity program is transparent. We provide a year in recap reconciliation that illustrates fees collected, spent, and any surplus or deficit for the following year budget. We also provide the written operations plan upon request.

16. Does the developer pay for amenity fees on unsold lots?

The developer pays for all upfront capital and installation expenditures. The developer does not additionally contribute fees for unsold lots, units or homes. The amenity fee is in place to maintain and upkeep amenities for residents. No amenity use occurs from unsold lots.

17. We already pay strata fees. How does the amenity fee and program impact us?

Amenity fees for all strata properties, both building strata and bare land strata, are sent to the strata management company for collection from the homeowners. This may be done on a monthly basis or an annual basis, depending on how the strata corporation prefers to handle this. Should you have questions regarding how your strata collects amenity fees, please contact your strata management company directly.

18. We don't plan to build right away. Must we still pay the fee?

The outside date of construction commencement – 2 years – is put in place to accommodate homeowner's personal requirements to build a home. The developer encourages every homeowner to build immediately. Accordingly, the amenity fee is payable on lots which are not yet built upon by homeowners, as it is their choice when they build.

Homeowners can and often do use the amenities before and during their home construction. Additionally, the amenity fee is based on property value assessment, and accordingly the amenity fee will be low before and during construction as compared to a completed home value.

Attached below is an example of the covenant that was included in the sales process with the disclosure statement if you purchased directly from a developer, and is registered on all homeowner titles and would be included in any sales closing process if you have purchased a previously owned home.

SECTION 219 COVENANT - COMMUNITY AMENITIES AND SERVICES

BETWEEN:

KINNIKINNIK DEVELOPMENTS INC.

(Incorporation No. BC0622664) #302 –
3275 Lakeshore Road Kelowna, British
Columbia V1W 3S9

(the
“Grantor”)

AND
:

KINNIKINNIK MANAGEMENT INC.

(Incorporation No. BC0776449) #302 –
3275 Lakeshore Road Kelowna, British
Columbia V1W 3S9

(the
“Grantee”)

WHEREAS:

- A. The Grantor is the registered owner in fee simple of the Lots;
- B. The Grantee is a company related to the developer of the Community and may provide to the Grantor and other owners and occupiers of land in the Community the Community Amenities and Services in accordance with this Agreement;
- C. The Grantee has been designated under section 219(3)(c) of the *Land Title Act* (British Columbia) as a person authorized to hold covenants pursuant to section 219 of the *Land Title Act* over certain specified lands, evidence of which designation has been registered in the Land Title Office under instrument number LB024670;
- D. The Grantee requires this Agreement in connection with the provision by the Grantee of the Community Amenities and Services in accordance with this Agreement and the Grantor has agreed to grant this Agreement; and
- E. The Grantee hereby attests that the lands encumbered by this Agreement do not lie within an Agricultural Land Reserve.

THEREFORE in consideration of the premises, the terms and conditions herein contained, ONE DOLLAR (\$1.00) now paid by the Grantee to the Grantor and other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged by the Grantor, the parties agree as follows:

1. Definitions. In this Agreement:

- (a) “**Assessments**” has the meaning assigned to such term in section 4.
- (b) “**Business Day**” means any day that is not a Saturday, Sunday, a statutory holiday in British Columbia, Easter Monday or Boxing Day.
- (c) “**Community**” means the master-planned community currently known as “McKinley Beach” which includes the Lots and which may from time to time and at any time in the future expand and be situated on some or all of the lands and premises currently legally described as:
- (d) “**Community Amenities and Services**” has the meaning assigned to such term in section 2.
- (e) “**Expenses**” means all costs and expenses incurred by or on behalf of the Grantee in respect of the provision of the Community Amenities and Services, including, without limitation, all goods and services tax (or any successor tax thereto), provincial sales tax and other taxes payable thereon, amounts paid to any Related Person in respect of the provision of any Community Amenities and Services, reasonable accounting costs and a general administration charge not to exceed 15% of all other costs and expenses, but excluding all capital costs.
- (f) “**Grantee’s Representatives**” means any person who is a Related Person to the Grantee and any officer, director, employee, agent, contractor, subcontractor, consultant or advisor of the Grantee or any person who is a Related Person to the Grantee.
- (g) “**Grantor**” means the above-described Grantor and any subsequent owner of the Lots or any portion thereof.
- (h) “**Lots**” means those lands and premises currently legally described in item 2 of the Form C (*Land Title Act*) attached hereto and any lot which may be created by the subdivision of the Lots, and “**Lot**” means any one of such Lots.
- (i) “**Operating Plan and Budget**” has the meaning assigned to such term in section 3.

(j) “**person**” means an individual, corporation, body corporate, partnership, joint venture, association, society or unincorporated organization or any trustee, executor, administrator or other legal representative.

(k) “**Related Person**”, in respect of any person, means:

(i) any affiliate of such person, within the meaning of the *Business Corporations Act* (British Columbia) or the *Canada Business Corporations Act*;

(ii) any associate of such person, within the meaning of the *Business Corporations Act* (British Columbia) or the *Securities Act* (British Columbia); and

(iii) any partnership, including a limited partnership, in which such person is a partner.

2. Provision of Community Amenities and Services. The Grantee, in its discretion, may provide or cause to be provided from time to time, as determined by the Grantee, facilities, amenities and services (collectively, the “**Community Amenities and Services**”) in connection with the Community. The Community Amenities and Services may include any or all of the following:

(a) inspection, maintenance, repair and replacement services in respect of any public trails at the Community, and the placement of insurance hereon;

(b) inspection, maintenance, repair and replacement services for any landscaping which is not on private land;

(c) inspection, maintenance, repair and replacement services in respect of any storm sewer or drainage lines, works or systems, or portions thereof, which are operated or maintained by the Grantee or the Grantee’s Representatives;

(d) the provision of signage and banners at the Community;

(e) the operation and maintenance of any public amenities or services at the Community, including, without limitation, public washrooms, a public swimming pool, cooking facilities, boardwalks, a playing field, a village square, water features, a skating rink, private roads, tennis courts, R.V. parking and trees;

(f) supplementary snow and ice removal, salting, sanding and similar services in

respect of public roads, sidewalks, paths and trails in addition to any such services provided by a governmental authority or body or any other person; and

- (g) such other amenities and services as are determined by the Grantee to be in the best interests of the Community.

The Community Amenities and Services which the Grantee provides or causes to be provided will be determined by the Grantee in its absolute discretion, having regard to the funds available for the payment thereof from the Assessments and other sources, and such other factors as are determined by the Grantee. Neither the Grantee nor any of the Grantee's Representatives will be required to provide any Community Amenities and Services unless they specifically agree to do so in writing and neither the Grantee nor any of the Grantee's Representatives will have any duty, obligation or liability whatsoever in connection with the provision of the Community Amenities and Services or the failure to provide or discontinuance of any amenities or services. The Grantor acknowledges and agrees that the Community Amenities and Services constitute amenities in relation to the Lots within the meaning of section 219 of the *Land Title Act* (British Columbia).

3. Operating Plan and Budget. For each calendar year, commencing with the calendar year after the year in which this Agreement is registered against title to the Lots, the Grantee will prepare an operating plan and budget (the “**Operating Plan and Budget**”) in connection with the provision of the Community Amenities and Services. The Operating Plan and Budget will describe the Community Amenities and Services the Grantee anticipates will be provided and the anticipated Expenses in connection therewith for the period covered by the Operating Plan and Budget. The Grantee may amend the Operating Plan and Budget at any time. On or before March 15 of each calendar year, commencing with the year following the year in which this Agreement is registered against title to the Lots, the Grantee will provide to the Grantor a written summary of the Operating Plan and Budget for that calendar year. The Grantee will provide the Grantor with a revised summary of the Operating Plan and Budget if the Grantee makes any material changes to the Operating Plan and Budget. The Grantor may inspect the full Operating Plan and Budget at the offices of the Grantee at any time during normal business hours, upon reasonable written notice to the Grantee. The Grantee confirms that if from time to time and at any time the City of Kelowna agrees to assume responsibility for providing any of the Community Amenities and Services, the Grantee will forthwith amend the Operating Plan and Budget to remove any costs relating to the provision of such assumed Community Amenities and Services.
4. Assessments. The Grantee, in its discretion, will establish from time to time the assessments (the “**Assessments**”) which will be payable by the Grantor and others in connection with the Grantee's provision of the Community Amenities and Services. The Grantee's schedule of the Assessments as of the date of this Agreement is set out in Schedule A hereto. Subject to section 5, the Grantee may revise the Assessments, the

method of calculation of the Assessments and the intervals for the payment of the Assessments at any time, acting reasonably, upon written notice to the Grantor. The Grantor agrees to pay all Assessments established by the Grantee in respect of the Lots or such portion thereof as is owned by the Grantor. The Grantor will pay all goods and services tax (or any successor tax thereto) and other taxes and charges payable on Assessments levied against the Grantor.

5. Assurances re: Assessments. The Grantee covenants and agrees that:

- (a) all Assessments collected by the Grantee will be applied by the Grantee toward the payment of Expenses and for no other purpose whatsoever;
- (b) the Grantee will not incur Expenses except in accordance with the then-current Operating Plan and Budget;
- (c) the Assessments will be fair and reasonable, based on the Community Amenities and Services provided by or on behalf of the Grantee;
- (d) the Assessments will be charged to all Lots on the basis of their respective assessed values;
and
- (e) the annual Assessments in respect of any Lot for any calendar year will not exceed 0.15% of the assessed value of such Lot for that calendar year. Notwithstanding the foregoing, the Assessments may vary based on the Community Amenities and Services provided and the number of owners paying for such Community Amenities and Services, and accordingly the Grantee reserves the right to change the basis for calculation of the Assessments and the Assessments may be subject to change, including increases such that the Assessments exceed 0.15% from time to time provided that in no circumstances will the Assessments exceed 0.30% of the assessed value of such Lot for that calendar year.

For greater certainty, all references in this Agreement to the “**Lot**” will include all improvements thereon.

6. Payment of Assessments / Grant of Rent Charge. The Grantor hereby covenants and agrees to pay to the Grantee the Assessments and the Grantor hereby grants to the Grantee a rent charge in respect of the Lots, for a term of 99 years from the date of the registration of this Agreement against title to the Lots, in respect of the payment of such amounts. Such rent charge will be the absolute property of the Grantee and all amounts payable in respect thereof will be payable by the Grantor forthwith upon demand, without

any deduction or set-off whatsoever. The Grantor will pay all Assessments to the Grantee at the Grantee's address set out above or at such other address as the Grantee may advise the Grantor in writing in accordance with this Agreement. Timing of Payment / Late Charges. The Assessments will be payable by the Grantor within 30 days of receipt by the Grantor of the Grantee's invoice therefor. If any such amount is not paid when due, the Grantor will be required to pay any reasonable late payment charge established by the Grantee and the outstanding amount will bear interest at the rate of 18% per annum, calculated daily and compounded annually, not in advance, from the date payment was due until the date payment is made.

7. Certificate of Payment. Within 10 days of any written request by the Grantor, the Grantee will issue a written certificate to the Grantor or any lender to or purchaser from the Grantor, certifying the amount outstanding under this Agreement as of the date of the certificate. The Grantor will be required to pay in advance the Grantee's reasonable fee for the issuance of the certificate.
8. Shortfalls. If the Assessments and all other assessments and recoveries received by the Grantee are not sufficient to pay the Expenses, the Grantee may (but will not be obligated to):
 - (a) advance its own funds or borrow funds from any Related Person in order to pay any Expenses, and the Grantee may repay the principal amount of such funds from the proceeds of any borrowings in accordance with subsection (b) or from Assessments subsequently collected, but no interest will be payable by the Grantor in respect of any such advances or borrowings; and
 - (b) borrow funds from any person who is not a Related Person in order to pay any Expenses, and the Grantee may repay the principal amount of such funds from other borrowings or from assessments subsequently collected and any reasonable interest payable in respect of such borrowings will be deemed to be Expenses.
9. Rebates, Exemptions, Waivers and Discharge. The Grantee in its absolute discretion may:
 - (a) give rebates in respect of the Assessments, exempt all or any Lots in respect of the Assessments or waive payment of the Assessments for such Lots or such periods of time as may be determined by the Grantee; or
 - (b) discharge this Agreement in respect of all or any Lots.
10. Grantor's Use of the Lots. The Grantor acknowledges, covenants and agrees that:
 - (a) the Grantor will not use the Lots or any building or other improvement thereon for any purpose that conflicts with, impairs or otherwise adversely impacts upon the provision by the Grantee of the Community Amenities and Services; and
 - (b) the Grantor will act reasonably and cooperate with the Grantee in connection with

the provision by the Grantee of the Community Amenities and Services, upon request by the Grantee.

11. Subdivision / Effect of Agreement. This Agreement and the rights herein granted will run with the Lots and each part into which the Lots may be subdivided, whether by subdivision plan, strata plan or otherwise howsoever, and the term "Grantor" includes the owner of each subdivided portion of the Lots and the successors in title thereof. Without limiting the foregoing, any amount payable hereunder will run with the Lots and each part into which the Lots may be subdivided. Notwithstanding anything contained in this Agreement, if any of the Lots is subdivided by subdivision plan, strata plan or otherwise howsoever, a default in respect of any subdivided portion of a Lot, including a default with respect to any amount payable in connection with any subdivided portion of a Lot, will not be a default with respect to any other Lot for which there has not been a default and the Grantee will not be entitled to exercise any of its rights or remedies under this Agreement except with respect to the subdivided portion or portions of the Lot for which there has been a default.

12. Grantee's Remedies. The Grantor hereby agrees that:

- (a) If the Grantor defaults in payment of all or any part of any amount payable under this Agreement for any period of two months or more, then the Grantee may, at any time thereafter, upon not less than 15 days' written notice to the Grantor, enter upon any part or parts of the Lots for which the Grantor is in default of payment and may distrain for the amount in arrears, including interest payable in accordance herewith, and the Grantee shall have all such remedies in respect thereof as if the Grantee were a landlord distraining for rent in arrears, including, without limitation, the powers of seizure, removal and sale.
- (b) If the Grantor defaults in the payment of all or any part of any amount payable under this Agreement for any period of six months or more, then the Grantee may, at any time thereafter, upon not less than 30 days' written notice to the Grantor, appoint a receiver in respect of any part or parts of the Lots for which the Grantor is in default of payment, and may foreclose upon such part or parts of the Lots and may cause such part or parts of the Lots to be sold, as if the Grantee were a mortgagee exercising a power of sale, provided that:
 - (i) the Grantor does not, before the completion of any sale of any part or parts of the Lots, pay the full amount owing, including interest thereon and all costs payable in connection with the exercise by the Grantee of its rights and remedies; and
 - (ii) the money realized by reason of any sale described above must be applied by the Grantee firstly to pay the actual costs incurred in respect of any notice, proceedings and sale, secondly, to satisfy the amounts owing to the Grantee hereunder and thirdly to pay the surplus, if any, to the

Grantor.

- (c) Despite the above provisions for enforcement of the payments due under this Agreement, the Grantee, at its option, may bring or take legal action against the Grantor for payment in any court of competent jurisdiction.
- (d) The Grantee may exercise any other remedy available at common law in respect of the enforcement of a rent charge.
- (e) The Grantor will pay for all of the Grantee's costs in connection with the enforcement of this Agreement, including, without limitation, all costs of distraint and sale and legal fees and disbursements on a solicitor and own client basis.

13. Injunctive Relief. The Grantor acknowledges and agrees that, without limiting any other right or remedy of the Grantee, the Grantee may obtain from a court of competent jurisdiction injunctive relief in respect of any breach or anticipated breach by the Grantor of any of the Grantor's duties or obligations under this Agreement.

14. Remedies Cumulative. All rights and remedies of the Grantee under this Agreement are cumulative and are in addition to and do not exclude any other right or remedy provided in this Agreement or otherwise allowed by law. All rights and remedies of the Grantee may be exercised concurrently, without the Grantee making any election, but will not give rise to duplicative liability of the Grantor.

15. Grantor's Releases and Indemnities. The Grantor hereby releases the Grantee and all of the Grantee's Representatives in respect of any loss, cost, damage or liability whatsoever, whether for property damage, personal injury, death or otherwise and whether arising from negligence or otherwise in respect of any of the following:

- (a) any act or omission by the Grantee or any of the Grantee's Representatives under or in connection with this Agreement;
- (b) the Grantee's exercise or failure to exercise any power, duty, authority or discretion under or in connection with this Agreement, including any inspection or any confirmation of compliance or conformity with this Agreement or any failure to inspect or so confirm, or the enforcement of or failure to enforce any of the Grantee's rights or remedies under this Agreement or any other agreement in respect of any lands adjacent to or in the vicinity of the Lots;
- (c) the provision of the Community Amenities and Services or the failure to provide or discontinuance of any amenities or services;
- (d) any action based on nuisance, escape or the rule in the Rylands v. Fletcher case

where the loss, cost, damage or liability arises, directly or indirectly, in whole or in part, out of any failure, breakdown, malfunction, insufficiency or inadequacy in respect of any of any of the Community Amenities and Services; or

- (e) the neglect or failure, for any reason, to discover any breach or default under, or to enforce any of its rights under, this Agreement,

and the Grantor agrees to indemnify and hold harmless the Grantee in connection with all of the foregoing, to the extent only that the foregoing relate to the Lots or the use or occupation of the Lots, provided that such release and indemnity will not apply to the extent, if any, that the Grantee or any of the Grantee's Representatives has acted in bad faith or been guilty of dishonest or malicious misconduct, libel or slander. This section 16 will survive any release or termination of this Agreement.

16. Application to Strata Corporation. Without limiting anything set out in this Agreement, any strata corporation created in respect of any of the Lots will be a "Grantor" and will be bound by all of the terms and conditions of this Agreement and any common property created by any strata plan in respect of a Lot will remain as part of the "Lots" and will be subject to this Agreement.

17. Assessment of Strata Lot Owners and Strata Corporation. If at any time the Lots or any portion thereof are stratified by a strata plan (including a bare land strata plan), the owner(s) of each strata lot within such strata plan will only be liable for the payment of that owner(s)' proportionate share of the Assessments, on the basis of the unit entitlement of the owner(s)' strata lot; however, the Grantee may, at its option, levy the Assessments to the strata corporation created in respect of such strata plan and the strata corporation will pay the Assessments so levied. If the Grantee levies any Assessments to a strata corporation, the owners of the strata lots created by the strata plan will not be released from their obligation to pay the Assessments or any other amount hereunder except to the extent that the strata corporation has made payment thereof, and the Grantee may levy the Assessments against the owners of the strata lots, based on their respective unit entitlement, if the strata corporation does not pay the Assessments to the Grantee.

18. Amendment. Except as expressly set out herein, this Agreement may only be amended by an agreement in writing signed by the Grantee and the Grantor of all portions of the Lots to which the amendment relates. No modification or amendment of any provision of this Agreement will be inferred from anything done or omitted by any of the parties except by an express agreement in writing duly executed and delivered by all of the parties.

19. No Waiver. No condoning, excusing or overlooking of any default nor any delay in proceeding or failure to proceed in the case of any default under this Agreement will operate as a waiver of or otherwise affect in any way any rights or remedies under this Agreement or at law. No waiver of any rights or remedies will be inferred from anything done or omitted to be

done by any party except by an express waiver in writing. No waiver in respect of any matter or thing will operate as a waiver in respect of any other matter or thing.

20. Governing Law. This Agreement will be governed by and interpreted in accordance with the laws of the Province of British Columbia, which is the proper law hereof, and the courts of British Columbia will have the exclusive jurisdiction with respect to all matters arising under or in respect of this Agreement.

21. Time of the Essence. Time is of the essence of this Agreement and will remain of the essence notwithstanding any extension of time given under or in connection with this Agreement.

22. Notices. All notices under this Agreement must be given in writing and delivered in accordance with this provision. The parties agree that:

(a) any notice to the Grantor may be sent to the Grantor's address according to Land Title Office records in respect of the Grantor's Lot or delivered to the Grantor; and

(b) all notices to the Grantee must be sent to the Grantee at the address set out above or such other address as the Grantee may notify the Grantor in accordance with the terms hereof at any time and from time to time.

If any of the Lots is stratified by a strata plan (including a bare land strata plan), any notice in respect of such stratified lands will be sufficiently given if given to the strata corporation and it will not be necessary to give notice to all of the strata lots within the strata plan. Notices will be sent by personal delivery, electronic transmission (including by fax) or by registered mail. Notices will be deemed to have been delivered (i) upon delivery, if delivered by hand, (ii) upon receipt, if sent by electronic transmission, or (iii) on the fifth Business Day after the mailing thereof, if sent by registered mail from a post office in British Columbia. In any court proceedings, any notice may be given in accordance with any requirements for service provided for pursuant to the Supreme Court Rules of the Province of British Columbia.

23. Transfer of Lot / Release of Grantor Upon Transfer. All amounts payable hereunder will survive any transfer or other disposition whatsoever of a Lot or any part thereof and the rent charge granted hereunder will continue to charge such Lot notwithstanding any transfer or other disposition whatsoever. No Grantor will be liable for any duty or obligation under this Agreement in respect of a Lot or any portion of a Lot where such duty or obligation arises after the Grantor has ceased to be the owner of such Lot or that portion of such Lot, as applicable.

24. Assignment by Grantee / Release. The Grantee may assign this Agreement to any

person, provided that the Grantee and its assignee satisfy any requirements set out in section 219 of the *Land Title Act* (British Columbia). Upon any assignment of this Agreement by the Grantee, the Grantee will be released from any and all further duties and obligations arising under this Agreement which arise after the time of such assignment.

25. Further Assurances. The Grantor will execute and deliver any further agreement, document or instrument and do and perform any further act or thing as may be required by the Grantee at any time and from time to time in order to evidence or give full force and effect to the terms, conditions and intent of this Agreement.

IN WITNESS WHEREOF the parties have executed and delivered this Agreement by signing on the *Land Title Act* Form C and Form D above.

SCHEDULE A

SCHEDULE OF SSESSMENTS

The Assessments are yet to be established by the Grantee.

In addition to the Assessments, the following charges will apply:

- Late Payment Charge: \$10.00 per occurrence (plus interest at 18% per annum)
- NSF or returned cheque charge: \$25.00 per NSF or returned cheque
- Certificate of Payment charge: \$25.00

Notes:

1. The above Assessments and other amounts are those in effect as of the date of this Agreement. The Grantee may change or supplement any of the foregoing at any time, in accordance with any requirements set out in this Agreement.
2. The Grantor will pay all GST (or any successor tax thereto) and other taxes and charges payable on all Assessments.

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