

TOWN OF LADYSMITH

**BYLAW NO. 1834**

A bylaw to regulate the servicing of developments

**WHEREAS** Council may appoint a person to be called an Approving Officer to exercise the jurisdiction conferred on him by the *Land Title Act* or the regulations or any other Act or regulations;

**AND WHEREAS** the Approving Officer appointed by the Town of Ladysmith has established procedures for examining proposed subdivisions;

**AND WHEREAS** the Council may by bylaw impose subdivision application fees pursuant to Section 931 of the *Local Government Act*;

**AND WHEREAS** Council may by bylaw regulate and require the provision of works and services in respect of the subdivision or development of land, pursuant to Section 938 of the *Local Government Act*;

**NOW THEREFORE** the Council of the Town of Ladysmith in open meeting assembled enacts as follows:

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1. The provisions of this Bylaw apply to the whole of the Town of Ladysmith and are divided into five parts and seven schedules dealing with the following subjects:

Part I	- Interpretation
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**PART I - INTERPRETATION**

- 1.01 In this Bylaw or in any resolution of Council passed relating to this Bylaw, unless the context otherwise requires:

**"Access"** means a method of approach to a parcel from a street, typically considered a driveway;

**"Access Strip"** means that part of a panhandle lot that provides access to a street;

**"Agreement"** means a Construction Agreement, a Maintenance Agreement or a Works and Services Agreement; and is a legally binding agreement between the owner of the land being subdivided and the Municipality, in the form attached hereto as Schedules A, B, and C, which details the Works and Services required to be completed or which have been completed in connection with the subdivision;

**"Approval"** means approval by the Approving Officer of the subdivision pursuant to the Land Title Act or the Condominium Act;

**"Approving Officer"** means the officer so appointed by Council resolution according to the

provisions of the Land Title Act;

**"Arterial Street"** means a street which is designed to carry traffic from collector streets to other streets and also usually provides direct access to properties;

**"Boulevard"** means that portion of a highway between the curb lines or the lateral boundary lines of a roadway and the adjoining parcel or between curb on median strips or islands, but does not include any curbs, sidewalks, ditches or driveways;

**"Building Code"** means the British Columbia Building Code, latest edition.

**"Collector Street"** means a street whose primary function is to carry local traffic to other streets, and which also usually provides direct access to properties;

**"Common Access"** means an access used by two or more adjoining parcels;

**"Community Sanitary Sewer System"** means a sewage collection and disposal system owned and operated by the Town;

**"Community Storm Drainage System"** means a system of drains or drainage collection works owned and operated by the Town;

**"Community Water System"** means a waterworks treatment and distribution system owned and operated by the Town;

**"Council"** means the elected Council of the Town;

**"Cul-de-sac"** means a collector street which has only one connection to the street system and which cannot reasonably be extended and which terminates in an area for the turning of motor vehicles;

**"Developer"** means the Applicant;

**"Engineer"** means the Director of Infrastructure Services of the Town appointed by Council or such other person as may, from time to time, be appointed by the Engineer to act on his behalf;

**"Final Approval"** means the signing by the Approving Officer of the subdivision plan in order to permit registration of the subdivision in the Land Titles Office;

**"Front Parcel Line"** means the lot line common to the lot and an abutting street, or where there is more than one lot line common to abutting streets, the shortest of these lines;

**"Lane"** means a street intended to provide secondary access to parcels of land;

**"Maintenance Period"** means the length of time that the works and services installed in connection with the subdivision are to be maintained free of defects by the developer and at his expense;

**"Major Arterial Street"** means a street which is designed to carry through traffic and which also usually provides direct access to properties;

**"Natural Boundary"** means the visible high water mark of any lake, river, stream or other body of water where the presence and action of the water are so common and usual, and so long continued as to mark on the soil of the bed of the body of water a character distinct from that of its banks, in vegetation and the nature of the soil;

**"Ornamental Street Light"** means a free-standing pole, other than wood, with attached luminaire;

**"Panhandle Parcel"** means any parcel which is serviced and accessed through a narrow strip of land (access strip) which is an integral part of the parcel;

**"Parcel"** means any lot, block or other area in which land is held or subdivided, but does not include a street;

**"Professional Engineer"** means a person who is registered or duly licensed as such to practice within the Province of British Columbia, pursuant to the Engineering Profession Act;

**"Proposer"** means a person applying for the approval of a subdivision, whether as the owner of the property proposed to be subdivided or as the agent authorized in writing by the owner;

**"Public Utility"** means the lawful distribution or distributor of electricity, gas, telephonic or television signals under the Utilities Commission Act, the Local Government Act, or a Statute of Canada;

**"Right-of-Way"** includes land or an interest in land acquired for the purpose of:

- (1) public rights of passage with or without vehicles;
- (2) constructing, maintaining, or operating any railway; or
- (3) erecting and maintaining any pole-line; or
- (4) laying, placing, operating, inspecting, replacing, repairing and maintaining drains, ditches, water courses, pipes, transmission lines, or wires for the conveyance, transmission, or transportation of water, gas, electrical power, communication, or for the disposal of sewage or drainage;

or any right-of-way of a like nature or for any purpose necessary for the operation and maintenance of the undertaking;

**"Roadway"** means the travelled portion of the street that is improved, designed or ordinarily used for vehicular traffic;

**"Sidewalks"** means a public way for pedestrian traffic, and includes trails and walkways;

**"Street"** means major arterial, arterial, collector streets, road, bridge, viaduct, lane and any other way open to public use, but does not include a private right-of-way on private property;

**"Subdivision"** means the division of land into two or more parcels, whether by plan, apt descriptive words, or otherwise;

**"Town"** means the area encompassed by the boundaries of the Town of Ladysmith;

**"Water Course"** means any natural drainage course or source of water, whether usually containing water or not, and includes any lake, river, creek, spring, ravine, swamp, gulch or source of ground water whether enclosed or in a conduit;

**"Works and Services"** means the streets, drainage, water and sewer systems, fire hydrants, boulevard crossings, transit bays, the sidewalks, boulevards, street lighting, underground wiring, public utilities, or any other works to be provided for in a subdivision of land under this Bylaw;

**"Zone"** means a land use designation created by the Zoning Bylaw of the Town and all amendments thereto.

1.02 Unless otherwise defined herein, any word or expression in this Bylaw shall have the same meaning as any similar word or expression contained in the Local Government Act.

## **PART II - APPLICATION, ADMINISTRATION AND ENFORCEMENT**

### **2.01 Application**

The provisions of this Bylaw apply to all lands within the area incorporated as the Town of Ladysmith. This Bylaw does not apply to any subdivision for which application was made prior to the date of coming into force of this Bylaw provided that such application is completed within 12 months of adoption of this Bylaw.

## 2.02 **Purpose**

The purpose of this Bylaw is to regulate the subdivision and development of land and the arrangement, design and construction of highways, works and services, in order to:

- (a) Promote orderly, efficient, economical and aesthetically pleasing development;
- (b) Ensure that subdivisions and developments are developed in harmony with the environment and are suited to the use for which they are intended.

## 2.03 **Other Bylaws and Enactments**

This Bylaw should be used in conjunction with the Schedules to this bylaw, the current Town of Ladysmith Zoning Bylaw and the current Ladysmith Community Plan. Users of this Bylaw are advised that they should also be knowledgeable of the requirements of other applicable enactments including without limitation the:

- (a) *Land Title Act*;
- (b) *Local Government Act*;
- (c) *Community Charter*
- (d) *Strata Property Act* and Bare Land Strata Regulations;
- (e) *Agricultural Land Commission Act*;
- (f) *Real Estate Act*;
- (g) *Land Survey Act*;
- (h) *Forest Land Reserve Act*;
- (i) *Waste Management Act*;
- (j) *Highway Act*;
- (k) *Builders Lien Act*;
- (l) *Water Act*.

## 2.04 **Works and Services Requirement**

As a condition of

- a) The approval of a subdivision, or
- b) The Issuance of a Building Permit, where the value of construction, as determined by the Building Bylaw, is greater than \$50,000

The owner of the land is required to provide works and services in accordance with the standards established in this Bylaw, on that portion of a highway immediately adjacent to the site being subdivided or developed, up to the center line of the highway.

## 2.05 **Subdivision Approval or Rejection**

Every application for the subdivision of land shall be made to the Approving Officer.

## 2.06 **Final Approval**

No land within the Town shall be subdivided until final approval by the Approving Officer has been obtained.

## 2.07 **Authorization to Enter**

The Approving Officer and/or the Engineer, being officers of the Town, are authorized to enter at all reasonable times, upon the lands for which application to subdivide has been made, in order to ascertain whether or not the provisions of this Bylaw are being provided.

## 2.08 **Penalty**

Any person who violates any of the provisions of this bylaw shall, upon summary conviction, be liable to a penalty not exceeding Two Thousand (\$2,000.00) Dollars, plus the cost of prosecution. Every day that the violation continues constitutes a separate offence.

## 2.09 **Severability**

If any portion of this Bylaw is held to be invalid by a court of competent jurisdiction, the validity of the remaining portions of this bylaw shall remain in full force and effect.

### **PART III - SUBDIVISION APPLICATION PROCEDURE**

#### 3.01 **Optional Preliminary Layout Review**

(a) **Process:**

Prior to submitting a formal application for subdivision approval as required in Part IV of this Bylaw, the Proposer may submit in writing to the Approving Officer, a proposal for preliminary layout review which shall state the name and postal address of the Proposer and the legal description and address of the parcel to be subdivided, and which shall be signed by the owner of the parcel. No examination fees or state of taxes need be submitted at this time.

(b) **Information Needed:**

The preliminary proposal shall be accompanied by a sketch plan drawn to a scale of not less than 1:2000 clearly indicating

- (i) the dimensions and full legal description of the parcel or parcels to be subdivided;
- (ii) the arrangement of the parcels and streets which would be created by the subdivision including the widths of the proposed streets and the approximate dimensions of the proposed parcels and any proposed alterations of lot lines or subdivision of any existing parcels;
- (iii) existing property lines and streets to be eliminated by the proposed subdivision;
- (iv) the relationship of the proposed subdivision onto adjacent streets and the connections of proposed new streets thereto;
- (v) existing buildings accurately located and identified;
- (vi) utility and other rights-of-way located and identified;
- (vii) watercourses and waterfrontages;
- (viii) the intended use of each parcel to be created by the subdivision;
- (ix) the name and postal address of the Proposer.

(c) **Additional Information**

The Approving Officer may require the Proposer for preliminary layout review to furnish:

- (i) such topographic information as may be required;
- (ii) such additional information as may be required to determine the suitability of the area for subdivision or the suitability of the size, shape, and orientation of the parcels required.

(d) **Approving Officer Review**

- (i) Within two (2) months of the receipt of the proposal for preliminary layout review, or of any additional information required under this Bylaw, the Approving Officer shall, in writing, indicate whether or not the proposed layout is acceptable for formal application.

- (ii) No letter shall be issued under this Section and no tentative approval shall be given unless the Proposer first executes an agreement in the form attached as Schedule D to this Bylaw, confirming that bylaws adopted by the Council under Part 26 of the Local Government Act prior to approval of the subdivision plan shall have effect with respect to the proposed subdivision.

(e) Revision to Layout

The Approving Officer may suggest revisions to the layout which, if incorporated into the plan, would enable the Proposer to apply for Subdivision Approval.

(f) Acceptance of Preliminary Layout

Acceptance of the preliminary layout by the Approving Officer shall:

- (i) be considered only as acceptance in principle of the preliminary layout proposal;
- (ii) not bind the Approving Officer to grant either tentative plan approval or final approval;
- (iii) be subject to all Town bylaws and Town plans governing the proposed subdivision.

### 3.02 Formal Application

An application for subdivision approval shall be submitted in writing to the Approving Officer and shall state the name and postal address of the Applicant as well as of the owner and the legal description and address of the parcel to be subdivided, and shall be signed by both the Applicant and the owner or be accompanied by some other valid proof that the Applicant is authorized to act as agent for the owner for the purpose of subdivision.

### 3.03 Application Fee

An application for subdivision and development approval shall submit with the application the fee set out in the Fees and Charges Bylaw of the Town.

### 3.04 Application Requirements

The subdivision application shall be accompanied by:

- (a) two white paper copies of a subdivision plan prepared by a B.C. Land Surveyor which shall show areas and dimensions of all lots being created; and, if not already submitted for preliminary layout review, then
- (b) other information as required in Section 3.01 (c) of this Bylaw;
- (c) a conceptual servicing plan prepared by a Professional Engineer indicating that the proposed subdivision shall be serviced in accordance with design criteria stipulated in this Bylaw. This requirement may be waived by the Approving Officer for small in-fill subdivision;
- (d) an itemized estimate prepared by a Professional Engineer of the cost of providing all works and services for the subdivision as required by this Bylaw. This requirement may be waived by the Approving Officer for small in-fill subdivisions.

### 3.05 Submission

Compliance with Sections 3.02, 3.03 and 3.04 of this Bylaw constitutes the tendering of the subdivision plan for examination and approval for the purposes of the Land Title Act and the Local Government Act.

### 3.06 **Preliminary Plan Approval**

Within two (2) months of the receipt of an application for subdivision approval or the receipt of any additional information which may be required under the Bylaw, the Approving Officer shall in writing:

- (a) grant conditional or unconditional preliminary plan approval, or
- (b) refuse preliminary plan approval stating explicitly the reason or reasons for refusal; or
- (c) notify the Applicant that preliminary tentative plan approval is being withheld pending modification of the plan as he may require.

### 3.07 **Resubmission**

Where preliminary plan approval is withheld the Applicant may, within three (3) months, re-submit to the Approving Officer for approval a revised plan of subdivision without paying a further examination or application fee.

### 3.08 **Revised Preliminary Plan Approval**

The Approving Officer shall, if satisfied that plans submitted under Subsection 3.07 of this Bylaw meet all the requirements of this Bylaw, grant preliminary approval within seven (7) days of the receipt of the revised plans.

### 3.09 **Approval to Proceed**

- (a) In all cases of preliminary plan approval, the Approving Officer shall explicitly state in writing all the requirements to be met before final approval can be given.
- (b) Preliminary plan approval shall:
  - (i) be considered as certification to the Applicant by the Approving Officer that all requirements for final subdivision plan approval have been met other than those in the letter of preliminary plan approval, and that work on the subdivision can proceed;
  - (ii) be effective only for a period of six (6) months, provided that, upon written application from the Applicant, the Approving Officer may extend the preliminary plan approval for a further three (3) months.

### 3.10 **Final Approval**

- (a) Following preliminary plan approval, the Proposer shall submit to the Approving Officer for final approval two (2) mylar transparencies and five (5) paper prints of the subdivision plan prepared by a B.C. Land Surveyor in a form acceptable to the Land Title Office, accompanied by:
  - (i) written notification by a Professional Engineer to the Approving Officer certifying completion of all works required under Part IV of this Bylaw, or a signed agreement in accordance with Section 4.05 (l) of this Bylaw together with all moneys payable or a letter of credit;
  - (ii) a certification from the Collector stating that all taxes which have been assessed or estimated on the land proposed for the subdivision have been paid;
  - (iii) payment of any applicable development cost charges and the administration and inspection fee required under Section 83 of the Land Title Act, Section 4.05 (n) of this Bylaw; and
  - (iv) where the owner of land is required to construct and install works and

services in accordance with the provisions of this Bylaw, the owner shall provide the Town with a maintenance bond in a form acceptable to the Approving Officer, equal to 10% of the cost of installing all such works and services as estimated in accordance with Section 3.04(d) of this Bylaw and as set out in Schedule A and B of this Bylaw;

- (v) confirmation that all other conditions specified in the letter of Preliminary Plan Approval, as set out in Section 3.06 of this Bylaw, have been fulfilled;
- (b) Forthwith upon receipt of the material required in Section 3.10(a) of this Bylaw, the Approving Officer shall in writing:
  - (i) grant final approval; or
  - (ii) notify the Applicant that final approval is being withheld, stating explicitly the reason or reasons therefor.
- (c) Final approval shall be certified by the return to the Applicant of the subdivision plan required under Section 3.10 (a) of this Bylaw, signed and dated by the Approving Officer in accordance with the provisions of the Land Title Act.

### 3.11 As Constructed Drawings

Upon completion of all Works and Services, the owner shall submit "As Constructed" drawings and "Certification of the Works" installed, both completed by a Professional Engineer in accordance with the requirements of the Standards, to the Approving Officer. All aspects of the work shall be carried out in accordance with good engineering practices and shall meet the requirements of the Standards set out in this bylaw.

## PART IV - CONDITIONS OF SUBDIVISION APPROVAL

### A. DESIGN

#### 4.01 Compliance with Bylaw

The subdivision of land in the Town of Ladysmith shall be approved only in compliance with the provisions of this Bylaw, Division (4) of Part 7 of the Land Title Act and Part 26 of the Local Government Act.

#### 4.02 Suitability

No subdivision will be approved until considered by the Approving Officer under the provisions of the Land Title Act.

#### 4.03 Area, Shape and Dimensions of Parcels

- (a) No subdivision shall be created in any zone so that any parcel created by the subdivision has an area in square metres or hectares or a frontage width in meters less than those set out for the zone in which it is located as set out in the Town of Ladysmith Zoning Bylaw, as amended.
- (b) The Approving Officer may, in the following situations, exempt a developer proposing to subdivide land from any prescribed minimum frontage. In the case of a panhandle parcel, the minimum frontage and panhandle width shall be 4.3 meters. In the case of cul-de-sac parcels the average of the front and rear parcel lines shall be not less than the minimum parcel frontage set out in the Zoning Bylaw.
- (c) The side lot lines of parcel to be created by the subdivision shall be as close as possible to right angles or radial to street lines, and the Approving Officer shall ensure that the parcels to be created are logical in shape and dimension.
- (d) Where the requirements are met with respect to the provision of water and method



of sewage disposal, minimum parcel size requirements shall not apply to a subdivision where:

- (i) two or more parcels will be combined into a single parcel;
- (iii) the effect of the subdivision would not increase the number of parcels, but would adjust the boundary between existing parcels, provided that the boundary change did not result in the reduction of either parcel by ten percent or more of its original size; or
- (iv) an accretion is added to a parcel."

## B. **LAYOUT**

4.04 The subdivision shall comply with the following:

- (a) the layout of all streets required in connection with the subdivision are in accordance with the design criteria specified in Schedule E of this Bylaw with respect to street and intersection geometrics, spacing, angle, location and grade;
- (b) sidewalks are provided where required to provide a logical and continuous pedestrian circulation system throughout the subdivision;
- (c) lanes shall be provided where necessary for servicing, continuity with existing lanes, or secondary access;
- (d) lane intersections shall have triangular corner cutoffs measuring not less than 3 m each way from the corner;

## C. **SERVICING**

### 4.05 **Requirements**

All works, services and public utilities required in this Part shall be provided by the Applicant and shall be designed, installed and constructed in accordance with the design criteria, specifications and standard drawings included as Schedule E of this Bylaw. Any such works not included in Schedule E of this Bylaw shall be approved by the Engineer.

#### (a) Highway Provision and Widening

The Applicant shall provide land as set out in Section 938 of the Local Government Act.

#### (b) Construction Requirements

All streets within or immediately adjacent to a subdivision shall be designed and constructed as specified in Schedule E.

#### (c) Electrical, Telephone and Cablevision Requirements

Underground electrical, telephone and cablevision wiring shall be provided to every lot created by the subdivision and shall be a requirement for all newly created streets within a subdivision and for all existing streets within or immediately adjacent to a subdivision. If the subdivision consists of residential infill development of not more than 3 lots along a street which already has overhead wiring adjacent to the subdivision, underground wiring will not be a requirement along that street. Installation and construction requirements shall be those specified by B.C. Hydro, B.C. Tel and Shaw Cable.

#### (e) Gas Utility Requirement

Underground gas utility piping and all related works shall be installed, located and

constructed in accordance with the requirements of Schedule E and Fortis Gas regulations and standards and shall be provided to every lot created by the subdivision.

(f) Water System Requirements

Every lot created by a subdivision shall be connected to a suitable point on the Town water system through a complete and fully operational system of watermains, water meters, valves, valve chambers, hydrants and other appurtenances provided by the Applicant, in accordance with Schedule E.

(g) Sanitary Sewer System Requirements

Every lot created by a subdivision shall be connected to a suitable point on the Town sanitary sewer system through a complete and fully operational system of mains, manholes, necessary pumping stations and other appurtenances provided by the Applicant, in accordance with Schedule E.

(h) Drainage System Requirements

Every lot created by a subdivision shall be connected to a suitable point on the Town drainage system through a complete and fully operational system of mains, manholes, pumping systems, catch basins and other appurtenances provided by the Applicant, in accordance with Schedule E. Where the subdivision consists of infill development of not more than 3 lots along an existing street with ditches, the Approving Officer may approve drainage connections direct to the existing ditches where the construction of a storm sewer system would not be technically feasible at this time.

(i) Integrated Survey Monuments

The owner of any lands which are proposed to be subdivided and which require the dedication of streets, shall provide control monuments in the subdivision in the locations and in accordance with the standards as set in Schedule E.

Where a subdivision survey is carried out within an area declared an integrated survey area, all existing and new monuments pertinent to the survey of the subdivision shall be tied by survey to the nearest coordinate control monuments according to the procedures and regulations made by the Surveyor General.

All monuments installed as part of a subdivision shall be tied by survey to the subdivision survey.

(j) Excess Services

Where the Applicant is required by this bylaw to construct or replace any trunk water, sanitary sewer or storm sewer mains beyond the boundaries of the subdivision or development, or to provide the mains with excess capacity to the benefit of other lands, the Town may enter into an agreement with the owner of the lands to be subdivided to share all or part of the cost of any such trunk water, sanitary sewer, or storm sewer mains as set out in the Local Government Act. Where the provisions of Section 939 of the Local Government Act are invoked by Council, the rate of interest charged shall be six percent per annum.

(k) Refusal to Approve

Where works and services which would normally be required for the proposed subdivision or development under Section 4.05 (a), (b), (f) or (g) are part of a program covered by a Development Cost Charge Bylaw, the Approving Officer may refuse to approve the subdivision, or the Town may refuse to issue a Building Permit, until such time as the Town has Development Cost Charge funds available to pay for its share of the cost of such works unless the Applicant agrees to provide the services in which case his costs shall be deducted from the Development Cost Charges normally payable for that service.

(l) Completion of Works and Services

All works and services herein required to be constructed and installed at the expense of the applicant in connection with the subdivision or development of any lands shall be constructed and installed in compliance with this bylaw, the Local Government Act and the Land Title Act prior to final approval of the subdivision by the Approving Officer, or issuance of the Building Permit by the Town, unless the Applicant

- (i) deposits with the Town, the amount in cash estimated by the Approving Officer as the cost of installing any paying for all works and services required by this Subdivision and Development Bylaw, and enters into an agreement with the Town to have the Town do the work; or
- (ii) deposits with the Town cash or an irrevocable letter of credit, in the form of Schedule G, from a bank or other financial institution in the amount of 120% of the cost estimated by the Approving Officer of installing and paying for all works and services required by this Subdivision and Development Bylaw, and enters into an agreement with the Town to do the work by a specified date in accordance with this bylaw or forfeit the amount secured by the deposit to the Town.

(m) Return of Security

Where the Applicant has deposited cash or a letter of credit pursuant to Section 940 of the Local Government Act;

- (i) eighty-five percent (85%) of the cash or letter of credit deposited with the Town will be returned to the Applicant when the constructed works have been completed in compliance with the requirements of this Bylaw and the agreement entered into under Section 940 of the Local Government Act and inspected and approved by the Engineer; and
- (ii) the balance of the cash or letter of credit deposited with the Town will be returned to the Applicant one year after the date of approval of the works by the Engineer, provided that no latent deficiencies are found at the end of the one year period.

(n) Administration and Inspection Fees

Every Applicant shall, prior to approval of the subdivision plan or building permit and based on cost estimates acceptable to the Engineer, pay to the Town an administration and inspection fee calculated in accordance with the following schedule:

Estimated Cost of Providing  
All Works and Services  
Required By This Bylaw

Administration & Inspection Fees

\$100,000 & less

6% of estimated cost

\$100,001 to \$200,000	\$6,000 plus 4.5% of estimated cost above \$100,000
\$200,001 to \$300,000	\$10,500 plus 4% of estimated cost above \$200,000
\$300,001 to \$500,000	\$14,500 plus 3.5% of estimated cost above \$300,000
Over \$500,000	\$21,500 plus 2.5% of estimated cost above \$500,000

*Note: All fees are subject to applicable taxes*

**PART V - TITLE AND REPEAL**

**5.01 Citation**

This bylaw may be cited for all purposes as "Town of Ladysmith Subdivision and Development Servicing Bylaw 2013, No. 1834".

**5.02 Repeal**

"Town of Ladysmith Subdivision Control Bylaw, 1115" and all amendments thereto are hereby repealed.

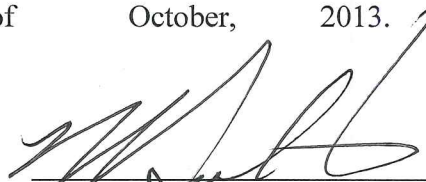
READ A FIRST TIME on the 3<sup>rd</sup> day of September, 2013.


READ A SECOND TIME on the 3<sup>rd</sup> day of September, 2013.

READ A THIRD TIME on the 3<sup>rd</sup> day of September, 2013.

ADOPTED on the 7<sup>th</sup> day of October, 2013.



  
\_\_\_\_\_  
Mayor (R. Hutchins)

  
\_\_\_\_\_  
Corporate Officer (S. Bowden)

**SCHEDULE "A"**

**SERVICING AGREEMENT**

**THIS AGREEMENT** made the \_\_\_\_\_ day of \_\_\_\_\_,

**BETWEEN:** TOWN OF LADYSMITH  
BOX 220, 410 ESPLANADE  
LADYSMITH, BRITISH COLUMBIA  
V9G1A2  
  
(the "Town") OF THE FIRST PART

**AND:**  
  
  
  
  
(the "Developer") OF THE SECOND PART

**WHEREAS:**

- A. The Developer intends to develop certain lands within the Town legally described as:  
  
(the "Land");
- B. The Developer intends to construct certain roads and other works and services (the "Works") within the Lands or adjacent to the Lands, and may wish to subdivide the Land according to a plan of subdivision (the "Plan") a copy of which is annexed to this Agreement as Schedule "A" (may not apply to a building permit only); and
- C. The Developer has requested approval of the Plan or issuance of the building permit prior to the construction and installation of the Works and is agreeable to entering into this bonding agreement pursuant to Section 940 of the Local Government Act and to provide the Bond specified by this Agreement.

**NOW WITNESSETH** that in consideration of the Town accepting this Bond and Agreement prior to completion of the construction of the Works, the Town and the Developer covenant and agree as follows:

**Interpretation**

- 1. In this Agreement  
  
**"Complete"** or **"Completion"** or any variation of these words when used with respect to the Works means completion to the satisfaction of the Municipal Engineer on the date certified by him in writing.  
  
**"Development"** includes the construction and completion of all aspects of the Plan, including, but not limited to, the Works.  
  
**"Engineer"** means the Director of Infrastructure Services of the Town appointed by the Council, or any other person from time to time duly authorized to act in his stead by the Council or the Engineer.  
  
**"Municipal Engineer"** means the Director of Infrastructure Services.  
  
**"Works"** means the Works and Services to be performed and constructed by the Developer for the approval of the Plan by Section 938 of the Local Government Act , or the completion of works immediately adjacent to the Land, and the bylaws of the Town and described in Schedule "B" to this

Agreement.

**Time for Completion**

2. The Developer shall complete the Works to the satisfaction of the Engineer by the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**Bond**

3. (1) As security for the due and proper performance of all of the covenants and agreements contained in this Agreement and the Works contemplated, the Developer has deposited with the Town cash in the amount of \$\_\_\_\_\_ as a Bond within the meaning of Section 940 of the Local Government Act (the "Bond").

Or

- (1) (a) As security for the due and proper performance of all of the covenants and agreements contained in this Agreement and the Works contemplated, the Developer has deposited with the Town an irrevocable Letter of Credit in the amount of \$\_\_\_\_\_ (the "Bond") to be valid for a period of twelve (12) months from the date of this Agreement.
- (b) The Town may make demand on the Bond at any time after the date of this Agreement.
- (c) The Developer is entitled to renew this Agreement if the Bond has been demanded.
- (d) The amount of the Bond may be reduced at any time with the approval of the Town in writing evidenced by the signature of the Approving Officer.
- (2) The Developer agrees that if the Works are not Completed by the date stated in Section 2, the Town may Complete the Works, at the cost of the Developer, and for that purpose may draw down upon the Bond the full amount of the Bond.
- (3) If there are insufficient monies contained in the Bond to Complete the Works the Developer shall pay the balance of the insufficiency forthwith upon invoice for it sent by the Town.
- (4) The Town may Complete the Works either by itself or by contractors employed by it.
- (5) If the Developer Completes the Works or if the Completion of the Works costs less than the amount of the Bond, then the Bond or a proportional part of it shall be returned by the Town to the Developer.
- (6) The cost of the Works shall include the actual cost of construction of them plus engineering, supervision, legal, survey and other costs.
- (7) An administration fee in the amount of 2 percent of the amount of the Bond, to a maximum of \$2,000.00 shall be made payable to the Town at the time the Bond is provided.

**Rights-of-Way**

4. Upon Completion of the Works, the Developer shall transfer and register in the Land Title Office the easements and rights-of-way prescribed by Schedule "B" to the persons or

corporations requiring them.

### **Standards of Works**

5. (1) The Works shall be constructed to the standards required by the Subdivision Control Bylaw of the Town and to the satisfaction of the Engineer.
- (2) If the Works prove to be in any way defective or do not operate as designed and intended then the Developer shall, at the expense of the Developer, modify and reconstruct the Works so that they are fully operative and function to the satisfaction of the Engineer. Upon Completion of the Works to the satisfaction of the Engineer a Certificate of Substantial Completion signed by the Developer's Engineer shall be issued.

### **Comply with Regulations**

6. (1) The Developer shall comply with the provisions of all Town Bylaws throughout the construction of the Works.
- (2) In the event that any material or debris should be left upon any road after the construction of the Works, the Developer covenants and agrees that the Town may forthwith remove the material or debris at the expense of the Developer, and the cost of the removal shall be determined by the Engineer.
- (3) In the event that any invoice of the Town for the removal of material or debris, remains unpaid after thirty (30) days of its receipt by the Developer, the Town may deduct the amount of the invoice from the Bond required by Section 3.

### **Developer's Engineer**

7. (1) At all times during the construction of the Works, the Developer shall keep and employ an professional engineer, registered in the Province of British Columbia, with the authority to act on behalf of the Developer.
- (2) Any explanations, orders, instructions, directions and requests given by the Town to the Developer's professional engineer shall be deemed to have been given to the Developer.

### **Changes in Standards**

8. The Developer covenants and agrees to comply with any changes in subdivision requirements or standards established by bylaw prior to the substantial commencement upon the Land of the Work contemplated by this Agreement and further agrees that the changes shall affect the Plan and Works.

### **Maintenance of Works**

9. (1) The Developer covenants and agrees to:
  - (a) maintain the Works in complete repair for a period of one (1) year from Completion;
  - (b) remedy any defects in the Works appearing within a period of one (1) year from the date of Completion and pay for any damage to other work or property resulting from the Development, save and except for defects caused by reasonable wear and tear, negligence of the Town, its servants or agents, acts of God, or vandalism proven to have been committed after the date of Completion;

- (c) leave with the Town for a period of one (1) year from the date of Substantial Completion the sum of \_\_\_\_\_ dollars (\$\_\_\_\_\_) as Security.
- (2) If the Developer fails to maintain the Works, remedy any defect or pay for any damage resulting from the Works, the Town may deduct from the Bond the cost of completing all Works, remedying any defect or paying for any damage.

**Duties of Developer**

- 10. The Developer covenants and agrees, prior to the final approval of the Plan, to:
  - (a) submit to the Town final as-built drawings, including 2 complete sets of prints, 5 additional copies of the overall design plan (key plan), and 1 set of mylar transparencies of all Works as constructed and as approved by the Engineer;
  - (b) pay all arrears of taxes outstanding against the Land;
  - (c) pay to the Town, in addition to the Bonds required by Section 3 and 9, all inspection fees, administration fees, engineering fees, non-refundable levies and charges, legal costs incurred by the Town directly attributable to this Agreement, and the cost of connecting all utilities to service the Development.

**Indemnity**

- 11. The Developer covenants and agrees to save harmless and effectually indemnify the Town against:
  - (a) all actions, proceedings, costs, damages, expenses, claims and demands whatsoever and by whomsoever brought by reason of the Development;
  - (b) all expenses and costs which may be incurred by reasons of this Agreement resulting in damage to any property owned in whole or in part by the Town or which the Town by duty or custom is obliged, directly or indirectly, in any way or to any degree, to construct, repair or maintain; and
  - (c) all expenses and costs which may be incurred by reason of liens, non-payment of labour or materials, Workers' Compensation assessment, unemployment insurance, Federal and Provincial Tax, or union dues check off, by reason of the Development.

**Town's Duty**

- 12. The Town hereby covenants and agrees with the Developer to permit the Developer to perform all Works upon the terms and conditions contained in this Agreement.

**Certificate of Acceptance**

- 13. The Town agrees to provide the Developer with a Certificate of Acceptance of the Works signed by the Engineer upon satisfactory completion by the Developer of all of the covenants and conditions in this Agreement, including but not limited to, the maintenance of the Works and keeping them in complete repair for a period of one (1) year.

**Withhold Building Permit**

- 14. The Developer covenants and agrees that the Town may withhold the granting of a Building Permit for any building or part of a building to be constructed upon the Land until the issuance of the Certificate of Substantial Completion referred to in Section 5.

**No Representations**



15. It is understood and agreed that the Town has made no representation, covenants, warranties, guarantees, promises or agreements with the Developer other than those in this Agreement and except those required by the Approving Officer.

**Town Property in Works**

16. Upon issuance of the Certificate of Acceptance the Works become the property of the Town, free and clear of any claim by the Developer or any person claiming through the Developer, and the Developer shall save harmless the Town from any claims and agrees that any claims may, at the option of the Town, be paid by and from the Bond.

**Terminology**

17. Wherever the singular or the masculine are used in this Agreement, they shall be construed as meaning the plural or the feminine or body corporate or politic where the context or the parties require.

**Binding Effect**

18. This Agreement shall enure to the benefit of and be binding upon the parties hereto, their respective successors and permitted assignees.

**Headings**

19. The headings in this Agreement are inserted for convenience only and shall not be construed as part of this Agreement for the purpose of interpretation.

IN WITNESS the parties have signed and sealed this Agreement on the day it was made.

THE CORPORATE SEAL OF THE )  
TOWN OF LADYSMITH was )  
affixed in the presence of: )  
)  
)  
\_\_\_\_\_)  
Mayor )  
)  
\_\_\_\_\_)  
Clerk )

THE CORPORATE SEAL OF THE )  
DEVELOPER was affixed in )  
the presence of: )  
)  
)  
\_\_\_\_\_)  
)  
\_\_\_\_\_)  
)

**SCHEDULE "B"**

**MAINTENANCE AGREEMENT**

**THIS AGREEMENT** made on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**BETWEEN:** TOWN OF LADYSMITH  
BOX 220, 410 ESPLANADE  
LADYSMITH, BRITISH COLUMBIA  
V9G1A2

(hereinafter called the "Town")

OF THE FIRST PART

**AND:**

(hereinafter called the "Developer")

OF THE SECOND PART

**WHEREAS** the Developer desires to develop certain lands within the Town, more particularly known and described as:

(hereinafter called the "Land")

**AND WHEREAS** the Developer has applied to subdivide the Land, according to a plan of subdivision, or has applied for a building permit to build on the Lands, a copy of which is hereunto annexed as Schedule "A";

**AND WHEREAS** the Developer constructed certain Works and Services (herein called the "Works"), more particularly described in Schedule "B" hereto;

**AND WHEREAS** the Developer has requested approval of the Subdivision, or issuance of the building permit prior to the expiration of a period of one year from the completion of the construction and installation of the Works and is agreeable to entering into this Bonding Agreement and to deposit the Bond herein specified;

**NOW THIS AGREEMENT WITNESSETH** that, in consideration of the premises and in consideration of the agreement by the Town to permit the Development and in consideration of the approval of the subdivision plan, the Town and the Developer herein covenant and agree as follows:

1. The development was considered complete by the Engineer on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (the date of Completion).
2. As security for the due and proper performance of all of the covenants and agreements in this Contract contained, the Developer has deposited with the Town:
  - (a) cash in the amount of \$\_\_\_\_\_.

Or

- (b) an irrevocable Letter of Credit in the amount of \$\_\_\_\_\_, a copy of which is attached hereto (hereinafter called the "Bond") to be valid for a period of twelve (12) months from the date hereof. PROVIDED HOWEVER, that the Town shall be at liberty to make demand on the said Letter of Credit at any time after the date hereof.
3. The Developer covenants and agrees to:
  - (a) maintain the Works in complete repair for a period of one (1) year from the date of Completion;

- (b) remedy any defects appearing within a period of one (1) year from the date of Completion and pay for any damage to other work or property resulting from the Development, save and except for defects caused by reasonable wear and tear, negligence of the Town, its servants or agents, or acts of God or by vandalism proven to have been committed after the date of Completion.
4. The Town hereby agrees to permit the Developer to perform all the said maintenance herein under the terms and conditions herein contained. If the Developer fails to maintain the Works, remedy any defect or pay for any damage resulting from the Works, the Town may deduct from the Bond the cost of maintenance, remedying any defect or paying for any damage.
5. The Developer shall, at all times in connection with the Development, keep and employ a professional engineer, registered as such in the Province of British Columbia, with the authority to act on behalf of the Developer. Any explanations, orders, instructions, directions and requests given by the Town to such professional engineer shall be held to have been given to the Developer.
6. The Developer covenants to save harmless and effectually indemnify the Town against:
  - (a) all actions and proceeding costs, damages, expenses, claims and demands whatsoever and by whomsoever brought by reason of the Works;
  - (b) all expenses and costs which may be incurred by reason of this Agreement resulting in damage to any property owned in whole or in part by the Town by duty of custom is obliged, directly or indirectly, in any way or to any degree, to construct, repair or maintain;
  - (c) all expenses and costs which may be incurred by reason of liens or non-payment of labour or materials, Workers' Compensation assessments, unemployment insurance, Federal or Provincial Tax, by reason of the Works.
7. The Town agrees that upon satisfactory completion of the maintenance period, to provide the Developer with a Certificate of Acceptance of said Works, signed by the Engineer.
8. The Works shall upon issuance of the Certificate of Acceptance, become the property of the Town, free and clear of any claim by the Developer or any person claiming through the Developer, and the Developer shall save harmless the Town from any such claims and agrees that such claims may, at the option of the Town, be paid by and from the Bond.
9. It is understood and agreed that the Town has made no representation, covenants, warranties, guarantees, promises or agreements with the Developer other than those in this Agreement and except those required by the Approving Officer.
10. Wherever the singular or the masculine are used in this Agreement, the same shall be construed as meaning the plural or the feminine or body corporate or politic where the context or the parties whereto so require.
11. This Agreement shall enure to the benefit of and be binding upon the parties hereto, their respective heirs, executors, administrators and assigns.

IN WITNESS the parties have hereunto set their respective hands and seal the day and year first above written.

The Corporate Seal of the )  
**TOWN OF LADYSMITH** was affixed )  
hereto in the presence of: )  
 )  
\_\_\_\_\_)  
Mayor )  
 )  
\_\_\_\_\_)  
Clerk )

The Corporate Seal of the )  
**DEVELOPER** was hereunto affixed )  
in the presence of its proper )  
Officers in behalf: )  
 )  
\_\_\_\_\_)  
 )  
\_\_\_\_\_)  
 )

The amount and form of this Bond and Agreement is approved by the Approving Officer for the Town of Ladysmith this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Approving Officer

**SCHEDULE "C"**

**WORKS AND SERVICES AGREEMENT**

**THIS AGREEMENT** made the \_\_\_\_\_ day of \_\_\_\_\_, . . .

**BETWEEN:** TOWN OF LADYSMITH  
BOX 220, 410 ESPLANADE  
LADYSMITH, BRITISH COLUMBIA  
V9G1A2

(the "Town") OF THE FIRST PART

**AND:**

(the "Developer") OF THE SECOND PART

**WHEREAS:**

A. The Developer desires to develop certain lands within the Town legally described as:

(the "Land");

B. Pursuant to Section 938 of the Local Government Act the Developer intends to provide Works and Services, in accordance with the Standards prescribed in the Subdivision and Development Bylaw of the Town on the Land and on that portion of street immediately adjacent to the Land up to the centre line of the street.

(the "Works");

C. The Developer has requested approval of the Subdivision or issuance of a building permit prior to the construction and installation of the Works and is agreeable to entering into this agreement pursuant to Section 940 of the Local Government Act and to provide the Bond specified by this Agreement.

**NOW WITNESSETH** that in consideration of the Town accepting this Bond and Agreement prior to completion of the Works, the Town and the Developer covenant and agree as follows:

**Interpretation**

1. In this Agreement:

**"Complete"** or **"Completion"** or any variation of these words when used with respect to the Works means completion to the satisfaction of the Engineer on the date certified by him in writing.

**"Development"** includes the construction and completion of all aspects of the Plan, including, but not limited to, the Works.

**"Engineer"** means the Director of Infrastructure Services of the Town appointed by the Municipal Council, or any other person from time to time duly authorized to act in his stead by the Council or the Engineer.

**"Works"** means the Works and Services to be performed and constructed by the Developer as a condition precedent to the approval of the Plan or the issue of the Building Permit under Section 938 of the Local Government Act and the bylaws of the Town and as more particularly described in Schedule "B" to this Agreement.

**Time for Completion**

2. The Developer shall complete the Works to the satisfaction of the Engineer by the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

**Bond**

3. (1) As security for the due and proper performance of all of the covenants and agreements contained in this Agreement and the Works contemplated, the Developer has deposited with the Town cash in the amount of \$\_\_\_\_\_ as a Bond within the meaning of Section 940 of the Local Government Act (the "Bond").

Or

3. (1) (a) As security for the due and proper performance of all of the covenants and agreements contained in this Agreement and the Works contemplated, the Developer has deposited with the Town an irrevocable Letter of Credit in the amount of \$\_\_\_\_\_ (the "Bond") to be valid for a period of twelve (12) months from the date of this Agreement.
- (b) The Town may make demand on the Letter of Credit at any time after this date of this Agreement.
- (c) The amount of the Bond may be reduced at any time with the approval of the Town in writing evidenced by the signature of its Approving Officer.
- (2) The Developer agrees that if the Works are not Completed by the date stated in Section 2, the Town may complete the Works, at the cost of the Developer, and for that purpose may draw down upon the Bond the full amount of the Bond.
- (3) If there are insufficient monies contained in the Bond to Complete the Works the Developer shall pay the balance of the insufficiency forthwith upon invoice for it sent by the Town.
- (4) The Town may Complete the Works either by itself or by contractors employed by it.
- (5) If the Developer Completes the Works or if the Completion of the Works costs less than the amount of the Bond, then the Bond or a proportional part of it, not required to pay for Completion or maintenance shall be returned by the Town to the Developer.
- (6) The cost of the Works shall include the actual cost of construction of them plus engineering, supervision, legal, survey and other costs.
- (7) An administration fee in the amount of 2 percent of the amount of the Bond, to a maximum of \$2,000.00 shall be made payable to the Town at the time the Bond is provided.

**Rights-of-Way**

4. Upon Completion of the Works, the Developer shall transfer and register in the Land Title Office the easements and rights-of-way prescribed by Schedule "B" to the person or corporations requiring them.

**Standards of Works**

5. (1) The Works shall be constructed to the standards required by the Subdivision Control

Bylaw of the Town and to the satisfaction of the Engineer.

- (2) If the Works prove to be in any way defective or do not operate as designed and intended then the Developer shall, at the expense of the Developer, modify and reconstruct the Works so that they are fully operative and function to the satisfaction of the Engineer.
- (3) Upon Completion of the Works to the satisfaction of the Engineer a Certificate of Substantial Completion signed by the Developer's Engineer shall be issued.

#### **Comply with Regulations**

6. (1) The Developer shall comply with the provisions of all Town Bylaws throughout the construction of the Works.
- (2) In the event that any material or debris should be left upon any road after the construction of the Works, the Developer covenants and agrees that the Town may forthwith remove the material or debris at the expense of the Developer, and the cost of the removal shall be determined by the Engineer.
- (3) In the event that any invoice of the Town, for the removal of material or debris, remains unpaid after thirty (30) day of its receipt by the Developer, the Town may deduct the amount of the invoice from the Bond required by Section 3.

#### **Developer's Engineer**

7. (1) At all times during the construction of the Works, the Developer shall keep and employ a professional engineer, registered in the Province of British Columbia, with the authority to act on behalf of the Developer.
- (2) Any explanations, orders, instructions, directions and requests given by the Town to the Developer's professional engineer shall be deemed to have been given to the Developer.

#### **Changes in Standards**

8. The Developer covenants and agrees to comply with any changes in subdivision requirements or standards established by bylaw prior to the substantial commencement upon the Land of the Works contemplated by this Agreement and further agrees that the changes shall affect the Plan, Development and Works.

#### **Maintenance of Works**

9. (1) The Developer shall:
  - (a) maintain the Works in complete repair for a period of one (1) year from Completion;
  - (b) remedy any defects in the Works appearing within a period of one (1) year from the date of Completion and pay for any damage to other work or property resulting from the Development, save and except for defects caused by reasonable wear and tear, negligence of the Town, its servants or agents, acts of God, or vandalism proven to have been committed after the date of Substantial Completion;
  - (c) leave with the Town for a period of one (1) year from the date of Substantial Completion the sum of \$\_\_\_\_\_ Dollars (\$) as security.

- (2) If the Developer fails to maintain the Works, remedy any defect or pay for any damage resulting from the Works, the Town may deduct from the Bond the cost of completing all Works, remedying any defect or paying any damage.

### **Duties of Developer**

10. The Developer covenants and agrees, prior to final approval of the Plan or other development, to:
  - (a) submit to the Town final as-built drawings, including 2 complete sets of prints, 5 additional copies of the overall design plan (key plan), and 1 set of mylar transparencies of all Works as constructed and as approved by the Engineer;
  - (b) pay all arrears of taxes outstanding against the Land;
  - (c) pay all current taxes levied or to be levied on the Land on the basis and in accordance with the assessment and collector's roll entries; and
  - (d) pay to the Town, in addition to the Bond required by Section 3 and 9, all inspection fees, administration fees, engineering fees, non-refundable levies and charges, legal costs incurred by the Town directly attributable to this Agreement, and the cost of connecting all utilities to service the Development.

### **Indemnity**

11. The Developer covenants and agrees to save harmless and effectually indemnify the Town against:
  - (a) all actions, proceedings, costs, damages, expenses, claims and demands whatsoever and by whomsoever brought by reason of the Development;
  - (b) all expenses and costs which may be incurred by reason of this Agreement resulting in damage to any property owned in whole or in part by the Town or which the Town by duty of custom is obliged, directly or indirectly, in any way or to any degree, to construct, repair or maintain; and
  - (c) all expenses and costs which may be incurred by reason of liens, non-payment of labour or materials, Workers' Compensation assessment, unemployment insurance, Federal or Provincial Tax, or union dues check off, by reason of the Development.

### **Town's Duty**

12. The Town shall permit the Developer to perform all Works upon the terms and conditions contained in this Agreement.

### **Certificate of Acceptance**

13. The Town agrees to provide the Developer with a Certificate of Acceptance of the Works signed by the Engineer upon satisfactory Completion by the Developer of all of the covenants and conditions in this Agreement, including but not limited to, the maintenance of the Works and keeping them in complete repair for a period of one (1) year.

### **Withhold Building Permit**

14. The Developer covenants and agrees that the Town may withhold the granting of a Building Permit for any building or part of a building to be constructed upon the Land until the issuance of the Certificate of Substantial Completion referred to in Section 5.



**No Representations**

15. It is understood and agreed that the Town has made no representation, covenants, warranties, guarantees, promises or agreements with the Developer other than those in this Agreement and except those required by the Approving Officer.

**Town Property in Works**

16. Upon issuance of the Certificate of Acceptance the Works become the property of the Town, free and clear of any claim by the Developer or any person claiming through the Developer, and the Developer shall save harmless the Town from any claims and agrees that any claims may, at the option of the Town be paid by and from the Bond.

**Terminology**

17. Wherever the singular and masculine are used in this Agreement, they shall be construed as meaning the plural or the feminine or body corporate or politic where the context or the parties require.

**Binding Effect**

18. This Agreement shall enure to the benefit of and be binding upon the parties hereto, their respective successors and permitted assignees.

**Heading**

19. The headings in this Agreement are inserts for convenience only and shall not be construed as part of this Agreement for the purpose of interpretation.

IN WITNESS the parties have signed and sealed this Agreement on the day it was made.

The Corporate Seal of the )  
**TOWN OF LADYSMITH** was affixed )  
in the presence of: )  
\_\_\_\_\_ )  
Mayor )  
\_\_\_\_\_ )  
Clerk )

The Corporate Seal of the )  
**DEVELOPER** was affixed in the )  
presence of: )  
\_\_\_\_\_ )  
\_\_\_\_\_ )  
\_\_\_\_\_ )

The amount and form of this Bond and Agreement is approved by the Approving Officer for the Town of Ladysmith this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Approving Officer

**SCHEDULE "D"**

**WAIVER AGREEMENT**

I/We, \_\_\_\_\_, registered owner or authorized agent of the registered owner of land located in the Town of Ladysmith and legally described as \_\_\_\_\_

\_\_\_\_\_ agree that, as a condition of obtaining preliminary review and any tentative approval from the Approving Officer for the proposed subdivision of the above-described property, as set out in the subdivision application dated \_\_\_\_\_, \_\_\_\_\_, all bylaws adopted by the Council of the Town of Ladysmith under part 26 of the Local Government Act prior to final approval of the proposed subdivision, shall have full force and effect with respect to the proposed subdivision.

It is further understood and agreed that the provisions of Section 943 of the Local Government Act, (whereby, if a local government adopts a bylaw under Part 26 of the Local Government Act, that otherwise would be applicable to a proposed subdivision for a period of 12 months after it was adopted), do not apply in respect of the proposed subdivision at preliminary layout acceptance.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_ )  
\_\_\_\_\_ in the presence of: )  
WITNESS: \_\_\_\_\_ )  
ADDRESS: \_\_\_\_\_ )  
\_\_\_\_\_ )  
OCCUPATION: \_\_\_\_\_ )  
\_\_\_\_\_ )  
OWNER  
\_\_\_\_\_ )  
OWNER

## SCHEDULE "E"

### MUNICIPAL SPECIFICATIONS AND DRAWING STANDARDS

*(Provided under Separate Cover)*

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5	Sanitary Sewer       A    Design B    Installation
6	Storm Drain           A    Design B    Installation
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***Please contact the Town's Engineering Department for the most current version of the "Municipal Specifications and Drawing Standards".***

## **SCHEDULE "F"**

### **RIGHT OF WAY**

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#### **WHEREAS:**

- A. The Grantor is the registered owner of an estate in fee simple of the following land in the Province of British Columbia:

**(the "Lands of the Grantor")**

- B. The Grantee is the Town of Ladysmith;
- C. This Right of Way is necessary for the operation and maintenance of the Works by the Grantee;
- D. To facilitate the installation of a system of waterworks/ sewerage works/ drainage works including all pipes, valves, fittings and facilities in connection therewith (**herein called the "Works"**), the Grantor has agreed to permit the construction by the Grantee of the Works on a portion of the Lands of the Grantor and to grant for that purpose the Right of Way in Section 1.1.

**NOW THEREFORE**, in consideration of the sum of One (\$1.00) Dollar of lawful money of Canada, now paid by the Grantee to the Grantor (the receipt and sufficiency of which is hereby acknowledged by the Grantor), and in consideration of the covenants and conditions agreed to be observed and performed by the parties and for other valuable consideration:

#### **1.0 THE GRANTOR:**

- 1.1 grants, conveys, confirms and transfers, in perpetuity, to the Grantee the full, free and uninterrupted right, license, liberty, privilege, permission and right of way to lay down, install, construct, entrench, operate, maintain, inspect, alter, remove, replace, bury, cleanse, string and otherwise establish one or more systems of Works upon, over, under and across that portion of the Lands of the Grantor, as follows:

**(the "Right of Way")**

- 1.2 covenants and agrees to and with the Grantee that the Grantee shall:

- (a) for itself and its servants, agents, workmen, contractors and all other licensees of the Grantee;
- (b) together with machinery, vehicles, equipment and materials;
- (c) upon, over, under and across the Right of Way;
- (d) as may be necessary, useful, or convenient for the purposes in Section 1.1; and
- (e) in connection with the operations of the Grantee in relation to the Works;

be entitled at all times to enter, use, pass and repass, labour, construct, erect, install, dig, carry away soil or other surface or subsurface materials, clear of all trees, growth, buildings, or obstruction now or hereafter in existence.

- 1.3 grants, conveys, confirms and transfers unto the Grantee for itself, and its servants, agents, workmen, contractors and all other licensees of the Grantee together with machinery, vehicles, equipment and materials, the right at all times to enter upon and to pass and repass over such of the Lands of the Grantor as may be required for the purpose of ingress to and egress from the Right of Way.
- 1.4 transfers, assigns and conveys to the Grantee all right, title and interest in and to any Works

that the Grantee, or the Grantor have prior to this Agreement established or constructed or maintained or operated with the Right of Way or in relation to any similar Works previously constructed by any party whatsoever within the Right of Way.

- 1.5 grants unto the Grantee the license permission and Right of Way to lay down, install, construct, operate, maintain, inspect, alter, remove, replace, cleanse, string, and otherwise establish one or more temporary systems of works upon the Lands of the Grantor, in the event of a breakdown or malfunction of the Works arising from movement or displacement of soil of the Lands.

**2.0 THE GRANTOR COVENANTS:**

- 2.1 not, and not to permit any other person, to erect, place, install or maintain any building, structure, addition to a building or structure, mobile home, concrete driveway or patio, pipe, wire or other conduit on, over or under any portion of the Right of Way.
- 2.2 not to do anything that in any way interferes with or damages or prevents access to or is likely to cause harm to the Works installed in or upon the Right of Way.
- 2.3 not to do or knowingly permit to be done any act or thing which will interfere with or injure the Works and in particular will not carry out any blasting on or adjacent to the Right of Way without the consent in writing of the Grantee, and consent shall not be unreasonably withheld.
- 2.4 not to substantially add to or diminish the soil cover over any of the Works installed in the Right of Way and in particular, without limiting the generality of the foregoing, will not construct open drains or ditches along or across any of the Works installed in the Right of Way without the consent of the Grantee, and consent shall not be unreasonably withheld.
- 2.5 from time to time and at all times at the reasonable request and at the cost of the Grantee to 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 Grantee of its rights under this Agreement.

**3.0 THE GRANTEE COVENANTS:**

- 3.1 not to bury any debris or rubbish of any kind in excavations or backfill, and to remove shoring and like temporary structures as backfilling proceeds.
- 3.2 to thoroughly clean all lands to which it has had access under this Agreement of all rubbish and construction debris created or placed thereon by the Grantee and to leave such lands in a neat and clean condition.
- 3.3 as soon as weather and soil conditions permit, and as often as it may exercise this right of entry to any of the Lands of the Grantor, to replace the surface soil as nearly as may be reasonably possible to the same condition as it was prior to the entry, in order to restore the natural drainage to the lands. This shall not require the Grantee to restore any trees or other surface growth, but the Grantee shall leave the lands in a condition which will not inhibit natural regeneration of that growth.
- 3.4 as far as reasonably possible, to carry out all work in a proper and workmanlike manner so as to do as little injury to the Lands of the Grantor as possible.
- 3.5 to make good at its own expense all damage or disturbance which may be caused to the Lands of the Grantor in the exercise of its rights hereunder.
- 3.6 as far as reasonably possible, to restore any fences, lawns, flower beds, at its cost as nearly as may be reasonably possible to the same condition that they were in prior to any entry by the Grantee upon the Lands of the Grantor.

**4.0 THE PARTIES COVENANT TO AND AGREE WITH EACH OTHER,  
as follows:**

- 4.1 the Works, together with all pipes, valves, conduits, wires, casings, fittings, lines, meters, appliances, facilities, attachments or devices used in connection therewith shall constitute the Works.
- 4.2 in spite of any rule of law or equity to the contrary, the Works brought on to, set, constructed, laid, erected in, upon or under the Right of Way by the Grantee shall at all times remain the property of the Grantee, even if the Works are annexed or affixed to the freehold, and the Works shall at any time and from time to time be removable in whole or in part by the Grantee.
- 4.3 in the event that the Grantee abandons the Works or any part of them, the Grantee may, if it so elects, leave the whole or any part of the Works in place and if so abandoned the Works, or part thereof, shall become the property of the Grantor.
- 4.4 no part of the title in fee simple to the Lands of the Grantor shall pass to or be vested in the Grantee under or by virtue of this Agreement, and the Grantor may fully use and enjoy all of the Lands of the Grantor subject only to the rights and restrictions in this Agreement.
- 4.5 the Grantor acknowledges that (a) these Covenants are enforceable against the Grantor and his successors in title, but (b) the Grantor is not personally liable for breach of these Covenants after the Grantor has ceased to be the owner of the Lands.
- 4.6 if at the date hereof the Grantor is not the sole registered owner of the Lands of the Grantor, this Agreement shall nevertheless bind the Grantor to the full extent of his interest therein, and if he shall acquire a greater or the entire interest in fee simple, this Agreement shall likewise extend to such after-acquired interests.
- 4.7 where the expression "Grantor" includes more than one person, all covenants made by the Grantor shall be construed as being several as well as joint with respect to all persons constituting the Grantor.
- 4.8 this Agreement shall continue to benefit and be binding upon the Grantor and Grantee, and their respective heirs, administrators, executors, successors and assigns, as the case may be.
- 4.9 gender specific terms include both genders and corporations, and the singular and plural forms are interchangeable, according to the context.
- 4.10 the Grantor and Grantee acknowledge that this Agreement has been duly executed and delivered by the parties executing Forms C and D (pages 1 and 2) attached hereto.

**CONSENT TO GRANT OF RIGHT OF WAY**  
**BY CHARGEHOLDER**

**KNOW ALL MEN BY THESE PRESENTS** that \*, as the registered holder of a charge by way of \* against the within described property, which said charge is registered in the Land Title Office at Victoria, British Columbia, under number \*, for and in consideration of the sum of One Dollar (\$1.00) paid by the Grantee to the said Chargeholder (the receipt whereof is hereby acknowledged), agrees with the Grantee, its successors and assigns, that the within Right of Way shall be an encumbrance upon the within described property in priority to the said charge in the same manner and to the same effect as if it had been dated and registered prior to the said charge.

**IN WITNESS WHEREOF** the parties hereto have caused these presents to be signed, sealed and delivered in the presence of their duly authorized officers.

Officer Signature

Execution Date  
Y M D

Party(ies) Signature

\*

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

AS TO ALL SIGNATURES

**OFFICER CERTIFICATION:**

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1989, c. 116, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

**SCHEDULE "G"**

**LETTER OF CREDIT GUIDELINES**

That the Town of Ladysmith will accept Irrevocable Standby Letters of Credit issued by banks chartered under the Bank Act (Canada), credit unions or other financial institutions regulated under the Financial Institutions Act (B.C.), acceptable to the Town of Ladysmith.

A letter of credit to be acceptable by the Town of Ladysmith must be on the financial institutions letterhead and shall contain the following:

1. The correct mailing address and phone number of the issuing institution and Letter of Credit number.
2. The name and mailing address of the person or corporation who has requested the Letter of Credit.
3. The Letter of Credit must be addressed to the Corporation of the Town of Ladysmith.
4. The expiry date and time of the Letter of Credit.
5. The following clause: **"It is a condition of this Irrevocable Standby Letters of Credit that it shall be deemed to be automatically extended without amendment for a further one (1) year period from the present or any future expiration date hereof, unless, at least 30 days prior to the present or any future expiration date, the issuer notifies the Town of Ladysmith in writing by registered mail that it does not elect to consider this Irrevocable Standby Letters of Credit to be renewable for any additional period."**
6. The amount of the Letter of Credit.
7. The purpose for which the Letter of Credit is being established, including if applicable, the legal description and the street address of any properties to which the Letter of Credit pertains.
8. The municipal project number or file number.
9. How drawings against the Letter of Credit are made.
10. The fact that partial drawings may be made.
11. The fact that the financial institution will not enquire as to whether or not the Town of Ladysmith has a right to make demand on the Letter of Credit.
12. The fact that the Letter of Credit is irrevocable up to the expiry date. This statement must be contained within the text of the Letter of Credit.

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