

WORKS AND SERVICES AGREEMENT

THIS AGREEMENT dated for reference the 20th day of May, 2016

BETWEEN:

THE CORPORATION OF THE DISTRICT OF WEST VANCOUVER, 750 - 17th Street, West Vancouver, British Columbia, V7V 3T3

(the “**District**”)

OF THE FIRST PART

AND:

SEWELL’S LIMITED, a corporation incorporated under the laws of the Province of British Columbia and having its registered and records office at 700 – 401 West Georgia Street, Vancouver, British Columbia, V6B 5A1

(the “**Owner**”)

OF THE SECOND PART

AND:

HB NELSON LIMITED PARTNERSHIP, a limited partnership formed under the laws of the Province of British Columbia and having an office at 501 – 1067 West Cordova Street, Vancouver, BC, V6C 1C7

(the “**Developer**”)

OF THE THIRD PART

AND:

WESTBANK PROJECTS CORP., a corporation incorporated under the laws of the Province of British Columbia and having an office at 501 – 1067 West Cordova Street, Vancouver, BC, V6C 1C7

(the “**Covenantor**”)

OF THE FOURTH PART

WHEREAS:

- A. The Owner is the owner of those lands in the District of West Vancouver legally described in Schedule "A" hereto (the "**Lands**");
- B. The Owner has entered into the Purchase Agreement with the Covenantor, pursuant to which, among other things, the Developer has agreed to acquire a portion of the Lands and to undertake a redevelopment of the Lands for residential and commercial uses and for this purpose required that the Lands be subdivided;
- C. The Developer, on behalf of the Owner has applied to subdivide the Lands and has under section 506 of the *Local Government Act*, R.S.B.C., 2015, c.1 requested the District enter into this Agreement in order to enable the Approving Officer to approve the subdivision before the construction and installation of all works and services required by the Servicing Bylaw; and
- D. The Covenantor has agreed to guarantee all covenants and obligations of the Developer under the terms of this Agreement; and
- E. The Owner and the Developer have agreed to grant and transfer to the District all their right, title and interest in and to the works and services required to be constructed and installed hereunder to the District and the District has agreed to accept such transfer of the works and services on the terms of this Agreement.

NOW THEREFORE in consideration of \$10.00 now paid by each of the Owner, the Developer, and the Covenantor to the District and to each other and in consideration of the mutual promises contained in this Agreement and in consideration of the District entering into this Agreement to allow the construction and installation of the works and services after the approval of the subdivision of the Lands (the receipt and sufficiency of which is acknowledged by each of the Owner, the Developer, and the Covenantor), the Owner, the Developer, and the Covenantor covenant and agree with the District as follows:

ARTICLE 1**INTERPRETATION****1.1 Definitions**

In this Agreement the following terms have the following meanings:

- (a) "**Approved Civil Works Design and Specifications**" has the meaning given to it in Section 2.3(b);
- (b) "**Approving Officer**" means the approving officer for the District appointed under the *Land Title Act*;

- (c) **“Certificate of Substantial Completion”** means each of the certificates issued by the Engineer or the Director, as the case may be, upon the completion of each Component of the Works pursuant to Section 4.4 or Section 4.5;
- (d) **“Civil Works”** means those works and services described in Schedule “C” to this Agreement as may be amended from time to time pursuant to subsections 2.3(b) and 2.3(c) herein;
- (e) **“Completion”** means, separately, completion of each Component of the Works as set out in Section 2.5 herein to the satisfaction of the Engineer or the Director, as the case may be, when so certified by him or her by the issuance of a Certificate of Substantial Completion for each Component of the Works respectively;
- (f) **“Component”** means a component of the Works as set out in Section 2.5;
- (g) **“Council”** means the council of the District of West Vancouver;
- (h) **“Deposit”** has the meaning given to it in Section 2.1;
- (i) **“Development Covenant”** means the section 219 covenant granted by the Owner and the Developer to the District, pursuant to an agreement dated for reference _____ 2016;
- (j) **“Development Master Plan”** has the meaning ascribed to it in the Development Covenant;
- (k) **“Director”** means the District’s Director of Planning & Development Services, or his or her designate;
- (l) **“Engineer”** means the District’s Manager of Development Engineering or his or her designate;
- (m) **“Landscape Plan”** means the street landscape plan prepared by Merrick Architecture – Borowski Sakumoto Fligg McIntyre Ltd. dated January 1, 2016, a reduced paper print copy of which is attached hereto as Schedule “D”;
- (n) **“Lot”** or **“Lots”** means any one or more of the lots created by deposit and registration of the Subdivision Plan at the Lower Mainland Land Title Office;
- (o) **“Maintenance Period”** has the meaning given to it in Section 5.1(a);
- (p) **“Master Plan Area”** means the area outlined in bold on the sketch drawing attached hereto as Schedule “E”;

- (q) **“New Roads”** means all of the dedicated roads within the Development Master Plan Area as shown on the Subdivision Plan and the Master Plan Area;
- (r) **“Off Site Works”** means all those parts of the Works that are located on dedicated road, including the New Roads, or on District-owned land or within a statutory right of way in favour of the District;
- (s) **“Proposed Development”** has the meaning ascribed to it in the Development Covenant;
- (t) **“Purchase Agreement”** means the purchase agreement made as of December 14, 2015, among the Owner, Sewell’s Landing Inc. and the Covenantor, as the same may be amended from time to time, pursuant to which the Developer has agreed to acquire a portion of the Lands and to undertake the development of the Lands on behalf of the Owner and the Developer, on the terms and conditions set forth therein;
- (u) **“Servicing Bylaw”** means the District’s Subdivision Control Bylaw No. 1504, 1955;
- (v) **“Street Landscaping”** means the street landscaping to be constructed by the Developer in accordance with the terms and conditions set out herein and as illustrated on the Landscape Plan and as may be amended from time to time pursuant to subsections 2.3(b) and 2.3(c) herein;
- (w) **“Subdivision”** means the subdivision of the Lands in accordance with the Subdivision Plan;
- (x) **“Subdivision Plan”** means the plan of subdivision attached as Schedule “B” hereto;
- (y) **“Subdivision Requirements”** means the requirements imposed by the Approving Officer (by means of his authority under the *Land Title Act*) and the District (by means of the Servicing Bylaw);
- (z) **“Utilities”** means sanitary and storm sewers, detention ponds and other drainage works, water lines, electrical and communication supply lines and related ducts, manholes and service kiosks, and gas; and
- (aa) **“Works”** means collectively all those works and services to be performed by the Developer in accordance with the Subdivision Requirements, being:
 - (i) the Civil Works;
 - (ii) the Street Landscaping;
 - (iii) the Utilities; and

(iv) the Off Site Works.

and including all testing, examinations, inspections, and certifications required by the Engineer in connection therewith.

1.2 Schedules

The following schedules are annexed to and form part of this agreement:

- Schedule "A" – Lands
- Schedule "B" – Plan of Subdivision
- Schedule "C" – Description of Civil Works
- Schedule "D" – Street Landscape Plan
- Schedule "E" – Master Plan Area

ARTICLE 2

COVENANTS OF THE DEVELOPER

2.1 The Developer covenants and agrees:

- (a) to install, construct, complete and maintain the Works as set out herein;
- (b) to pay to the District upon execution of this Agreement a non-refundable Administration and Site Servicing Review fee in the amount of 4 percent of total costs of all Works;
- (c) as security for the due and proper performance by the Developer of all of the covenants, agreements and obligations of the Developer in this Agreement, the Developer has deposited with the District by cash the sum of \$600,000.00 to secure the obligation of the Developer to construct the Works (the "**Deposit**");
- (d) that the Deposit, less the amount required to be retained by the District pursuant to Article 5 will only be returned to the Developer upon completion of the Works in accordance with this Agreement; and
- (e) that no interest on the Deposit shall be paid to the Developer.

2.2 The Developer further covenants and agrees:

- (a) not to commence the construction or installation of the Civil Works without first advising the Engineer in writing at least 14 days before commencement; and
- (b) after notifying the District and at least 7 days before commencing construction and installation of the Civil Works, as the case may be, to deliver a letter to all owners and occupiers of properties that are immediately adjacent to the Lands advising of the date that construction

and installation of the said Works will commence, describing in general terms the nature of the said Works and providing the name, and telephone number of the Developer's contact, and to deliver a copy of said letter to the District.

2.3 In carrying out the Works the Developer covenants and agrees:

- (a) to construct, install and complete the Street Landscaping in accordance with the Landscape Plan and to the District's standards for these Works;
- (b) to construct, install and complete the Civil Works and any other part of the Works not referred to in subsection 2.3(a) in accordance with all of the plans and specifications attached to or referenced in Schedule "C" and to the District's standards for such Works and in accordance with the Subdivision Requirements (the **"Approved Civil Works Design and Specifications"**);
- (c) to obtain prior written approval of the Engineer for any changes to the Approved Civil Works Design and Specifications and to obtain prior written approval of the Director for any changes to the Landscape Plan;
- (d) to comply with any changes to the Approved Civil Works Design and Specifications required by the Engineer as necessary to satisfy the Engineer, acting reasonably, that the Works will function and operate as contemplated by the Subdivision Requirements, and to comply with any changes to the Landscape Plan required by the Director as necessary to satisfy the Director, acting reasonably, that the Street Landscaping will function and operate as contemplated by the Subdivision Requirements;
- (e) to pay when invoiced all costs, fees and charges imposed by the District in relation to services it provides to the Developer or the Lands in relation to the Works including, without limitation, the cost of all necessary connections of the Civil Works to the District's water distribution, storm drainage and sewerage systems as may be applicable and the cost of performing other administrative services that the District commonly charges;
- (f) to pay when invoiced all reasonable inspection and testing costs actually incurred by the District when the Engineer requires inspection and testing in addition to or in substitution for the inspection and testing provided by the Developer in order to certify that the Works are constructed and installed in accordance with the Subdivision Requirements;
- (g) not to damage any municipal works, services or property or remove, alter or destroy any survey pins, or posts, and if in default, to replace, repair and restore any such damage to the reasonable satisfaction of the Engineer;

- (h) to comply with all statutes, laws, regulations and orders of any authority having jurisdiction and without limiting the generality of the foregoing all bylaws of the District;
- (i) to not deposit or permit the deposit of any material or debris upon any highways or District land except as maybe approved in writing in advance by the Engineer;
- (j) to retain a professional engineer to provide competent survey, layout and on site supervision to ensure that the Works, other than the Street Landscaping, conform to Approved Civil Works Design and Specifications and to record the details of any field design or construction changes to the Approved Civil Works Design and Specifications and to record all of the geometric information for preparation of "as constructed" drawings. No underground works shall be covered or trenches backfilled without inspection and approval by the professional engineer and without adequate as-constructed information being obtained, including line and grade of buried works;
- (k) to retain at all times a professional landscape architect to provide competent survey, layout and on site supervision to ensure that the Street Landscaping conforms to the Landscape Plan and to record the details of any field design or construction changes to the Landscape Plan and to record all of the geometric information for preparation of "as constructed" drawings. No underground works shall be covered or trenches backfilled without inspection and approval by the professional landscape architect and without adequate as-constructed information being obtained, including line and grade of buried works;
- (l) to advise the Engineer of the name and address of the professional engineer and the professional landscape architect retained by the Developer and to ensure that such professional engineer and landscape architect each maintains professional liability and errors and omissions insurance of not less than \$2,000,000.00 per occurrence during the term of his or her engagement. The Developer's engineer and landscape architect shall each provide proof of such insurance before the Developer commences the construction and installation of any portion of the Works for which the engineer or landscape architect is responsible;
- (m) not to employ any person or contractor in the construction of the Works who, in the reasonable opinion of the Developer's professional engineer is unfit, incapable or unskilled, and at all times, in connection with the execution of the Works, to employ and keep on site a competent general work superintendent; and
- (n) not to engage any contractor in respect of the Works unless the contractor holds a valid and subsisting business licence issued by the District.

- 2.4 Nothing in this Agreement shall exempt the Owner, the Developer or the Lands from the ordinary jurisdiction of the Council, its bylaws and regulations, and without limitation the construction of the Works shall not confer directly or indirectly any exemption or right of setoff from development cost charges, connection charges, application fees, user fees or other rates, levies and charges payable under any bylaw of the District, except as statutorily required.
- 2.5 The Developer shall prosecute the Works diligently and shall complete the Works, excluding the Street Landscaping, by the date which is 18 months from the issuance of the initial building permit for the Development, and shall complete the Street Landscaping by the date which is 28 months from the issuance of the initial building permit for the Development.
- 2.6 In addition to the Developer's maintenance and repair obligations in Section 5.1, if any completed Works are damaged for any reason by the Developer or its contractors, subcontractors, agents or employees or are otherwise damaged as a result of any construction activity on any of the Lots (other than by reason of the sole negligence of the District or its employees) at any time prior to the Completion of all of the Works, then the Developer must, upon notice from the Engineer, repair the damage, all as required by, and to the satisfaction of, the Engineer, acting reasonably.
- 2.7 The Developer acknowledges and agrees that the Developer relies exclusively on its own engineer and contractor and that the District does not, by its approvals, inspections or acceptance of the Works, warrant or represent that the Works are without fault or defect and that all approvals and inspection of the Works given or made by the District are for the sole benefit of the District and shall in no way relieve or excuse the Developer from constructing and installing the Works in strict compliance with the provisions of this Agreement.
- 2.8 Each Component of the Works itemized in Section 2.5 will be deemed to be completed when the Engineer or the Director, as the case may be, issues a Certificate of Substantial Completion for that Component of the Works in accordance with Section 4.4 or 4.5 herein, which the Engineer and the Director agree to issue upon completion of each Component of the Works in accordance with this Agreement.
- 2.9 Upon completion of the Off Site Works, the Developer and the Owner, as applicable, covenant and agree:
- (a) to assign to the District all of its right, title and interest in and to the Off Site Works free and clear of all encumbrances;
 - (b) to grant or cause to be granted to the District in registrable form all statutory rights of way reasonably required by the Engineer for the

operation, maintenance, repair and replacement of the Off Site Works on such terms as are satisfactory to the Engineer, acting reasonably;

- (c) to execute and deliver or cause to be executed and delivered at the request of the District all such further transfers, instruments, agreements, documents and plans and to perform all such acts as may be necessary to give full effect to this Agreement; and
- (d) to deliver to the District final as-constructed drawings of the Off Site Works which drawings shall be prepared by the Developer's professional engineer in accordance with good engineering practice and be in a form satisfactory to the Engineer.

ARTICLE 3

THE DEPOSIT

- 3.1 Any letter of credit provided by the Developer to the District as the Deposit shall be a clean and irrevocable letter of credit in favour of the District drawn on a Canadian chartered bank, trust company or credit union located in British Columbia, and shall, unless the Engineer agrees to a shorter time period, be valid for a minimum of one year after the date of this Agreement and shall otherwise be in a form acceptable to the Director of Finance of the District.
- 3.2 The Developer and the District agree as follows with respect to the Deposit:
 - (a) the Developer will ensure that any letter of credit is replaced, and will provide evidence thereof satisfactory to the Engineer, not later than 21 days prior to an expiry date of the letter of credit;
 - (b) the District may draw upon any letter of credit at any time in the event of a default by the Developer of its obligations to complete the Works as required hereunder, and may hold or use the proceeds in accordance with this Agreement; and
 - (c) any return of the Deposit will be made to the Developer.
- 3.3 No interest shall be paid to the Developer.
- 3.4 The Engineer may, in his discretion, allow partial drawdowns of the Deposit as the Works are completed, subject to the following provisos:
 - (a) the amount drawn down shall be based on a progress report from the Developer's professional engineer;

- (b) the portion of the Works for which the drawdown is requested must be installed, tested, passed and accepted by the District prior to the Engineer allowing any drawdown;
 - (c) no drawdowns will be allowed unless and until the District has received a payment statutory declaration in relation to the completed portion of the Works in a form satisfactory to the Engineer;
 - (d) drawdowns may not be made at intervals of less than 3 months and may not exceed 3 in any one calendar year; and
 - (e) in no event shall the Deposit be drawn down to less than an amount that is equal to the sum of 15% of the Deposit for the underground and above-ground works listed in Schedule "C" and 25% of the Deposit for landscaping works listed in Schedule "D", all as stipulated in section 2.1 (c).
- 3.5 The Deposit, or the portion remaining after the drawdowns, if any, contemplated by Sections 3.2(b) and 3.4, less the amount required by Article 5 to be maintained, will be returned to the Developer if
- (a) all of the Works are satisfactorily completed (except for the Deficiencies pursuant to Section 4.3) as herein provided;
 - (b) the Developer pays all invoices of the District as herein required;
 - (c) Certificates of Substantial Completion for all of the Works have been issued pursuant to Section 4.4.

ARTICLE 4

APPROVAL OF THE WORKS

- 4.1 The District may, at any time and from time to time, enter onto the Lands to inspect the Works.
- 4.2 The Developer shall separately notify the District when each Component of the Works as set out in Section 2.5 has been completed. Within 30 days of receipt of notice from the Engineer that the Component of the Works said to be complete or part thereof are defective, inoperative or not in accordance with the Approved Civil Design and Specifications (except for the Street Landscaping, which shall be in accordance with the Landscape Plan), the Developer shall commence correcting, modifying or reconstructing the said Component of the Works and shall correct, modify or reconstruct such Component until it is fully operative and functional in accordance with the Subdivision Requirements, this Agreement, the Approved Civil Works Design and Specifications, and the Landscape Plan all to the reasonable satisfaction of the Engineer.

- 4.3 The Engineer may, at his option, determine that certain defects in a Component of the Works, may best be remedied or built after Completion of the subject Component. In that event, these matters will be listed as deficiencies (the “**Deficiencies**”) to be remedied or built by the Developer within the time period specified for such portion of the Component by the Engineer.
- 4.4 The completion of each Component of the Works pursuant to this Agreement (except for the Deficiencies pursuant to Section 4.3) shall be established by confirmation by the Engineer in writing by means of separate Certificates of Substantial Completion for each Component of the Works as set out in Section 2.5 which shall be issued once the Component is completed in accordance with this Agreement.
- 4.5 The completion of each Component of the Street Landscaping pursuant to this Agreement (except for the Deficiencies pursuant to Section 4.3) shall be established by confirmation by the Director in writing by means of separate Certificates of Substantial Completion for each Component of the Street Landscaping as set out in Section 2.5 which the Director will issue upon completion of each Component in accordance with this Agreement. The Director will not issue a Certificate of Completion for any Component of the Street Landscaping until after receipt of a report from the Developer’s landscape architect, in form and content satisfactory to the Director, certifying that the said Component of the Street Landscaping has been completed.
- 4.6 If the Developer shall fail to observe, perform or keep any of the provisions of this Agreement to be observed, performed or, kept by the Developer, and the Developer has not rectified such default within twenty-one (21) days following delivery of a written notice by the District detailing the Developer’s default, the District may without prejudice to any other remedy rectify the default of the Developer at the Developer’s expense and without limiting the generality the foregoing, the Developer and the Owner agree that the District may:
- (a) enter onto the Lands and do or cause to be done through its servants, contractors and others, all such things as may be required to fulfil the obligations of the Developer including without limitation, the completion of the Works, or any part thereof; and
 - (b) make any payments required to be made for and on behalf of the Developer,
- and for such purposes may without notice or limitation deduct from the Deposit all costs, and expenses incurred, payments and expenditures made, and monies due and owing to the District, including an administrative fee payable to the Municipality in the amount of 20% of the

costs incurred under subsections (a) and (b). The District may undertake the Works either by itself or by contractors engaged by it. For greater certainty, the District is under no obligation to complete any Component of the Works and may undertake any Component of the Works in whole or in part, in the District's discretion as to extent and timing of completion.

- 4.7 If the District incurs any costs and expenses or makes payments all as either provided in Article 4 of this Agreement or otherwise in this Agreement, or if the Developer is otherwise indebted to the District under this Agreement, the Developer shall upon notice from the District pay to the District the amount of such deficiency together with interest thereon at 6% per annum calculated and compounded monthly from the date such cost or expense was invoiced. Such amounts required to be paid by the Developer shall constitute a debt due and owing to the District.

ARTICLE 5

MAINTENANCE AND DEFICIENCY DEPOSIT

- 5.1 The Developer covenants and agrees to:

- (a) maintain all of the Works, other than the Utilities, in complete repair for a period commencing on the Completion of all of the Works, other than the Works set out in subsections 5.1(b), up to and including the date that is one year after Completion of all of the Works (the **"Maintenance Period"**);
- (b) remedy any defects in a Component of the Works, other than the Utilities, appearing within the applicable Maintenance Period for that Component and pay for any damage to other work or property resulting therefrom, save and except for defects caused by reasonable wear and tear, negligence of the District, its servants or agents, or acts of God occurring after the date of Completion of the Component;
- (c) complete all Deficiencies listed pursuant to Section 4.3 and within the time period specified by the Engineer, acting reasonably given the nature of the Deficiencies, but in any event no less than 45 days;
- (d) keep deposited with the District for a period of one year from completion of the Works (the **"Maintenance Period"**), the sum of 15% of the Deposit for underground and above-ground works listed in Schedule "C" and 25% of the Deposit for landscaping works listed in Schedule "D", all as stipulated in section 2.1 (c). The retained Deposit must be cash or letter(s) of credit (the **"Maintenance Deposit"**); and
- (e) as security for its obligations under section 5.1 (c), the Developer shall keep as a deposit for the Deficiencies with the District, for the period specified by the Engineer, a percentage of the initial Deposit, which said

percentage shall be set by the Engineer in his sole discretion (the "Deficiency Deposit").

5.2 If the Developer fails to maintain any Component of the Works, complete repair, remedy any defects any Component of the Works, or fails to attend to the Deficiencies or fails to remedy further defects as required by Section 5.1, and the Developer does not remedy such failure within twenty-one (21) days following delivery of a written notice by the District, then the District may without prejudice to any other remedy rectify the default of the Developer at the Developer's expense and without limiting the generality of the foregoing, the Developer and the Owner agree that the District may:

(a) enter onto the Lands and do or caused to be done through its servants, contractors and others, all such things as may be required to fulfil the obligations of the Developer including without limitation, the maintenance of any Component of the Works, the remedying of any defects, and the completion of all deficiencies; and

(b) make any payments required to be made for and on behalf of the Developer,

and for such purposes may without notice or limitation, deduct from the Maintenance Deposit or the Deficiency Deposit the costs, and expenses incurred, payments and expenses made, and monies due and owing to the District, including an administrative fee payable to the District in an amount of 20% of the costs incurred under sub-sections (a) and (b). The District may undertake the maintenance of any Component of the Works either by itself or by contractors engaged it. For greater certainty, the District is under no obligation to complete or maintain any Component of the Works and may undertake any Component in whole or in part, in the District's discretion as to extent and timing of completion.

5.3 The Engineer shall release the Deficiency Deposit or balance thereof forthwith upon completion of all Deficiencies, subject to the following requirements:

(a) receipt of a report from the Developer's professional engineer certifying that the Deficiencies are complete; and

(b) the Deficiencies must be tested, passed and/or accepted by the District prior to the release of the Deficiency Deposit.

5.4 Upon the expiry of the Maintenance Period the Maintenance Deposit or the portion remaining after the draw downs, if any, contemplated by sections 3.2 and 5.2 will be returned to the Developer if the Engineer is satisfied that:

(a) there are no outstanding repairs, remedial action or defects in respect of the Works and all of the Works are satisfactorily completed (except for the Deficiencies pursuant to section 4.3) as herein provided; and

- (b) the Developer has paid all invoices of the District as herein required.

ARTICLE 6

RELEASE AND INDEMNITY OF THE DISTRICT

6.1 The Developer and the Owner shall release, and do hereby indemnify and save harmless the District, its elected officials, officers, employees, agents and others for whom the District is in law responsible from and against:

- (a) all costs and expenses (including legal costs on a solicitor and own client basis), damages, claims, demands, actions, suits and liability by whomever brought or made and however arising, directly or indirectly from the design, construction, installation or approval of the Works and any injury or damage thereby caused to person or property (including death);
- (b) all costs and expenses (including legal costs on a solicitor and own client basis), damages, claims, demands, actions, suits and liability by whomever brought or made and however arising whether directly or indirectly, from a breach of this Agreement by the Developer and/or the Owner;
- (c) all expenses and costs (including legal costs on a solicitor and own client basis) which may be incurred by the District arising directly or indirectly from any engineering, operation, construction, repair, replacement or maintenance by the District to or on any real or personal property which is affected by the Works and which the District either owns or is by duty or custom obliged directly or indirectly, in any way or to any degree to construct, repair, replace or maintain;
- (d) all expenses and costs (including legal costs on a solicitor and own client basis) incurred by reason of:
 - (i) liens for non-payment of labour and material, federal or provincial taxes or workers' compensation assessments; and
 - (ii) the presence of encroachments owing to mistakes in surveying;
 - (iii) relating to the construction and installation of the Works; and
- (e) workers' compensation assessments and unemployment insurance payments required to be paid by the District as a result of the District's election to complete the construction and installation of the Works,

except to the extent that such actions, proceedings, costs, damages, expenses, claims and demands as set forth in subsections 6.1(a) through (e), inclusive, arise from the sole negligence of the District. The indemnity contained in this

Article 6 shall terminate upon the completion of the Maintenance Period or completion of all Deficiencies, whichever is later.

ARTICLE 7

INSURANCE

7.1 Insurance

During the term of this Agreement the Developer shall, at its own expense, procure and maintain comprehensive general liability insurance in an amount not less than \$5,000,000.00 pursuant to an insurance policy in a form and substance reasonably acceptable to the District and providing for coverage of the Developer and the District in respect of any and all claims arising out of or connected with the following:

- (a) death of or injury to any person;
- (b) damage to or loss of use of property of any nature whatsoever of third persons; and
- (c) damage to or loss of buildings or improvements owned by the District of any nature whatsoever

related to, caused by or connected with the Works or related to, caused by or connected with the construction or installation of the Works.

Every such policy of insurance shall provide that:

- (d) the District is named as an additional insured and shall contain a cross-liability or severability of interest clause so that the District and the Developer may be insured in the same manner and to the same extent as if individual policies had been issued to each; and
- (e) such policy cannot lapse, be cancelled or altered without less than 30 days' prior written notice to the District.

7.2 Certificate of Insurance

The Developer shall provide to the District a certificate or certificates of the insurance procured pursuant to Section 7.1 prior to commencing construction of the Works and shall provide to the District certified copies of such policies forthwith upon request by the District.

ARTICLE 8 INSOLVENCY OF THE DEVELOPER

- 8.1 Notwithstanding any other provision of this Agreement, the District shall be entitled to draw on the Deposit, the Maintenance Deposit, and the Deficiency

Deposit, to complete the Works or remedy any defects in the Works in the event that:

- (a) the Developer commits an act of bankruptcy, or makes a proposal or general assignment for the benefit of its creditors;
- (b) an order is made or a resolution passed or petition filed for the liquidation or winding up of the Developer;
- (c) a receiver or receiver-manager of the Developer of the Lands is appointed or any encumbrance-holder takes possession of the Lands or any part thereof; or
- (d) the Developer defaults under the terms of the Agreement and fails or neglects to cure such default within 30 days' notice of default from the District.

The Developer agrees that the Deposit, Maintenance Deposit, and the Deficiency Deposit are not assets of the Developer and are not subject to any trust or other right or claim of the Developer, other than a contract claim expressly contemplated by this Agreement.

ARTICLE 9

COVENANTS OF THE DISTRICT

9.1 The District covenants and agrees that:

- (a) it will permit the Developer to perform the Off Site Works on the terms and conditions contained in this Agreement and to occupy and use District highways and District lands as necessary for the Off Site Works subject to terms and conditions in any case and from time to time as the Engineer acting reasonably may impose;
- (b) it will issue Certificates of Substantial Completion signed by the Engineer upon the Developer Completing each Component of the Works as set out in Sections 2.5 and 2.6;
- (c) it will issue a Certificate of Final Acceptance upon the satisfactory completion by the Developer of all covenants and conditions in this Agreement, and without limiting the generality of the foregoing, including the maintenance of the Works constructed under this Agreement in complete repair during the Maintenance Period, provided that all Deficiencies have been remedied.

ARTICLE 10

GENERAL PROVISIONS

- 10.1 The District acknowledges and agrees that Sewell's Limited is executing this Agreement as the current registered owner of the Lands, but pursuant to the Purchase Agreement, Sewell's Limited and HB Nelson Limited Partnership intend for HB Nelson Limited Partnership to acquire a portion of the Lands and to undertake the Proposed Development on the Lands, and accordingly, notwithstanding that Sewell's Limited is a party to this Agreement, HB Nelson Limited Partnership will be undertaking, at HB Nelson Limited Partnership's sole cost and expense, all of the covenants and obligations to the District set forth in this Agreement with respect to the installation, construction, completion and maintenance of the Works or any other works and services to be performed by HB Nelson Limited Partnership in accordance with the Subdivision Requirements, on its own behalf and on behalf of Sewell's Limited. For certainty and notwithstanding anything to the contrary, Sewell's Limited's covenants and obligations set forth in sections 2.4, 2.9, 4.6(a) and 5.2(a) of this Agreement shall remain covenants and obligations of Sewell's Limited.
- 10.2 The Developer hereby covenants and agrees with the Owner that, except as provided in any other agreement between the Owner and either or both the Developer and the Covenantor:
- (a) the Owner has no obligation to undertake, and is not responsible or liable for the costs or expense of, any obligations or covenants to the District set forth in this Agreement with respect to the installation, construction, completion and maintenance of the Works or any other works and services to be performed in connection with the Subdivision Requirements and the Developer will be solely responsible, at the Developer's sole cost and expense, for all such covenants and obligations to the District set forth in this Agreement with respect to the installation, construction, completion and maintenance of the Works or any other works and services to be performed by the Developer in accordance with the Subdivision Requirements; and
 - (b) the Developer hereby releases the Owner, and indemnifies and saves harmless and agrees to reimburse the Owner, from and against all liabilities, claims, actions, suits, damages, losses, costs, debts, fines, penalties, demands and expenses, including legal fees and disbursements, which may arise or accrue to the District or any other person, firm or corporation against the Owner or which the Owner may pay, incur, sustain or be put to by reason of any breach, default or failure of the Developer to comply with any of the covenants and obligations to the District set forth in this Agreement with respect to the installation, construction, completion and maintenance of the Works or any other

works and services to be performed by the Developer in accordance with the Subdivision Requirements.

The releases and indemnities set forth in this Section shall survive the expiration, termination or discharge of this Agreement, but shall be subject to the provision of any other written agreement between the Owner and either or both of the Developer and the Covenantor.

10.3 The Covenantor hereby unconditionally and irrevocably guarantees to the District the due and punctual performance of the Developer's covenants hereunder.

10.4 Workers' Compensation

- (a) The Developer will employ a general contractor, who will be deemed to be the "prime contractor" for the purposes of all applicable occupational health and safety laws, including the *Workers' Compensation Act* (British Columbia), in relation to the removal, construction, installation and, where applicable, maintenance of the Works in accordance with this Agreement. The Developer will comply, and will ensure that all of its contractors and any subcontractors comply with all requirements in the *Workers' Compensation Act* (British Columbia) and any other occupational health and safety laws, applicable to the removal, construction, installation and, where applicable, maintenance of the Works in accordance with this Agreement.
- (b) The Developer is responsible for filing any documents necessary to comply with the *Workers' Compensation Act* (British Columbia). Workers' Compensation Certification will be maintained in good standing throughout the life of this Agreement. The District may at any time require the Developer to provide evidence of its compliance and compliance of any or all of its subcontractors with all requirements under the *Workers' Compensation Act* (British Columbia), or payment of assessments due under it to Worksafe BC - the Workers' Compensation Board, or both.
- (c) When required to do so by the District, the Developer will provide the District with evidence of its compliance and compliance of any or all of its contractors and any subcontractors under this Section.

10.5 Wherever in this Agreement the approval of the Engineer or the Director is required or some act or thing is to be done to the satisfaction of the Engineer or the Director, as the case may be:

- (a) such provisions shall not be deemed to have been fulfilled or waived unless the approval or expression of satisfaction is in writing signed by the Engineer or the Director and no prior approval or expression of satisfaction and no condoning, excusing or overlooking by the District or

the Engineer or the Director, as the case may be, on previous occasions when such approval or satisfaction was required shall be taken to operate as a waiver of the necessity for such approval or satisfaction wherever required by this Agreement; and

- (b) such approval or satisfaction shall be at the discretion of the Director or the Engineer, as the case may be, acting reasonably,

and the Developer acknowledges and agrees that the Developer relies exclusively on its professional engineer and contractor and that the District does not, by its approvals, inspections or acceptance of the Works, warrant or represent that the Works are without fault or defect.

- 10.6 The Developer agrees under Section 511 of *the Local Government Act* that all bylaws of the District adopted under Part 14 of the *Local Government Act* shall have effect in respect of the Lands and the subdivision of the Lands, and that to the extent that such bylaws modify, alter or add to the requirements or standards for works and services of the type constituting the Works or any Component thereof, the Developer shall comply with such modifications, alterations or additions in constructing, installing and carrying out the construction and installation of the Works.
- 10.7 Unless otherwise expressly provided in this Agreement, wherever the Developer is obliged or required to do or cause to be done any act matter or thing such act, matter or thing shall be done by the Developer at its sole expense.
- 10.8 All notices, directions and other communications required or permitted to be given by one party to another pursuant to this Agreement shall be in writing and delivered, telecopied, or sent by registered mail postage prepaid and addressed as follows:

to the District:

The Corporation of the District of West Vancouver
750 - 17th Street
West Vancouver, B.C.

Attention: Director of Planning and Development Services
Fax: (604) 925-6083

to the Owner:

Sewell's Limited
6409 Bay Street
West Vancouver, B.C. V7W 3H5
Attention: Dan Sewell

with a copy to:

Koffman Kalef LLP
19th Floor, 885 West Georgia Street
Vancouver, B.C. V6C 3H4
Attention: Patrick J. Julian

to the Developer:

c/o HB Nelson Limited Partnership
501 – 1067 West Cordova Street
Vancouver, B.C. V6C 1C7

Attention: Development Manager

with a copy to :

Kornfeld LLP
1100 One Bentall Centre
505 Burrard Street
Vancouver, B.C. V7X 1M5

Attention: Neil Kornfeld
Fax: (604) 683-0570

to the Covenantor

Westbank Projects Corp.
501 – 1067 West Cordova Street
Vancouver, B.C. V6C 1C7

Attention: Development Manager

with a copy to :

Kornfeld LLP
1100 One Bentall Centre
505 Burrard Street
Vancouver, B.C. V7X 1M5

Attention: Neil Kornfeld
Fax: (604) 683-0570

or to such other address or telecopy number as may be specified by a party to the other in a notice given in the manner herein provided. Any such notice, direction or other communication will be deemed to have been received by the party to whom it was given:

- (a) on the day of delivery, if delivered;
- (b) on the day of transmittal thereof, if sent by telecopy; or on the third business day following the mailing thereof, if mailed.

if normal mail service is interrupted by strike, slowdown, force majeure or other cause, then the party sending a notice, direction or communication will telecopy or deliver such notice, direction or communication in order to ensure its prompt receipt.

- 10.9 The Developer confirms and acknowledges that none of the Works are excess or extended services the construction and installation of which would entitle the Developer to a latecomer payment under section 507 of the *Local Government Act*, as amended from time to time.
- 10.10 The District has made no representations, warranties, guarantees, promises, covenants or agreements to or with the Developer or Owner other than those in this Agreement
- 10.11 This Agreement shall not be assigned by the Developer unless the prior written consent to such assignment is first obtained from the District and the Engineer, which consent may be reasonably refused by the same if they are not wholly satisfied as to the financial, technical and managerial abilities of the proposed assignee to complete the terms hereof.
- 10.12 Wherever the singular or masculine is used in this Agreement, the same shall be construed as meaning the plural or the feminine or the body corporate or politic where the context or the parties so require.

- 10.13 If a court of competent jurisdiction holds any Section or lesser portion of this Agreement invalid, the invalid portion shall be severed and the invalidity of such Section or portion shall not affect the validity of the remainder.
- 10.14 Time is of the essence of this Agreement.
- 10.15 This Agreement shall enure to the benefit of and be binding upon the parties, their respective heirs, executors, administrators, successors and assigns.
- 10.16 This Agreement may be executed in any number of counterparts, all of which shall together be deemed to be and constitute one agreement. Execution of this Agreement may be made on copies transmitted by facsimile transmission and executed copies may be sent by facsimile transmission, and transmission of an executed copy shall be deemed to constitute communication of execution and acceptance of this Agreement.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals as of the day and year first above written.

THE CORPORATION OF THE DISTRICT)
OF WEST VANCOUVER)
 by its authorized signatories)
)
)
 _____)
 Mayor)
)
 _____)
 Municipal Clerk)

SEWELL'S LIMITED)
 by its authorized signatory)
)
)
 _____)
 Name:)
)

HB NELSON LIMITED PARTNERSHIP)
 by its authorized signatory)
)
)
 _____)
 Name:)
)

WESTBANK PROJECTS CORP.)
 by its authorized signatory)
)
)
 _____)
 Name:)
)

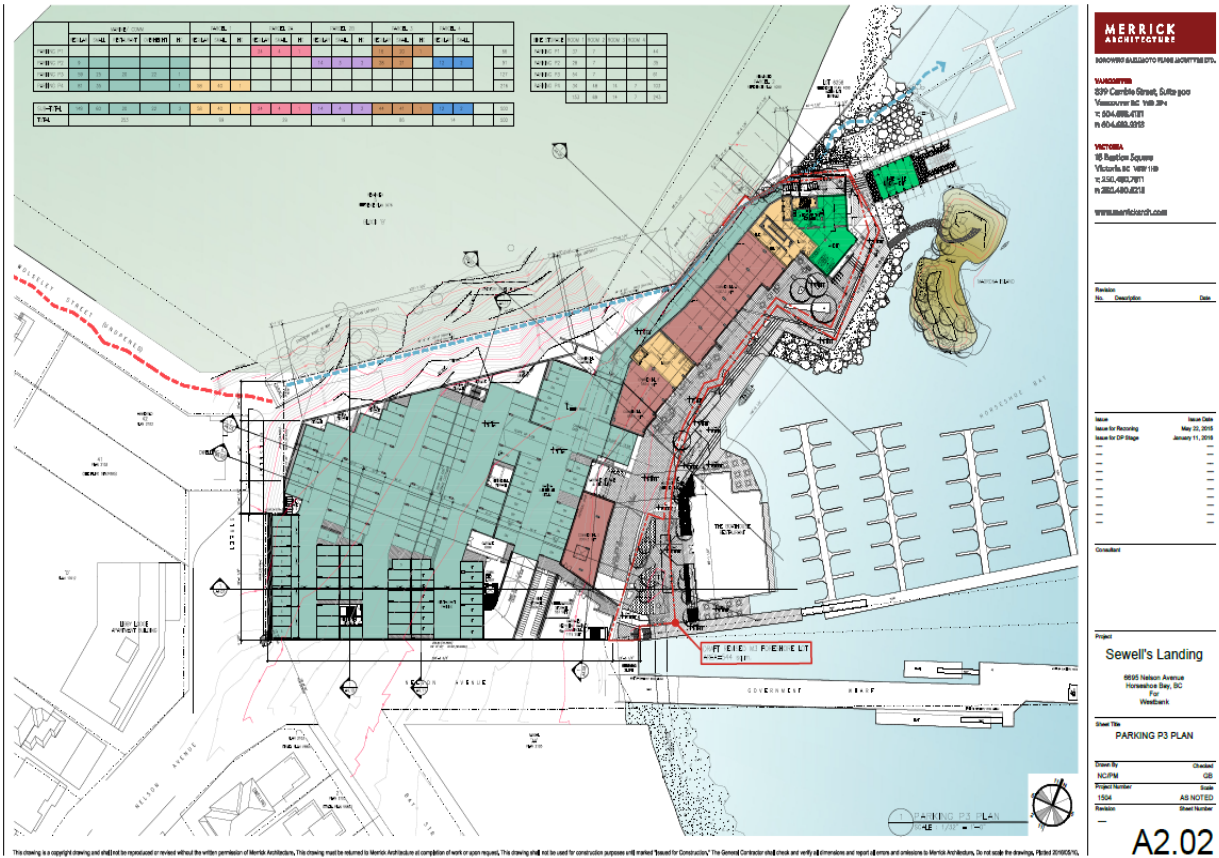
SCHEDULE "A"

The Lands

- (i) PID: 024-591-149
Parcel C District Lots 430 and 3840 Group 1 New Westminster District Plan
LMP43225; and
- (ii) PID: 014-051-061
Block 30 District Lot 430 Plan 2130.

SCHEDULE "B"

Plan of Subdivision



A2.02

SCHEDULE "C"

The Civil Works

Offsite Services – to service Sewells Landing from District services

Transportation:

(a) Civil Works:

- (i) Prior to the issuance of Building Permit, the Developer must submit a "Traffic Management Plan" TMP to the District for approval. The TMP shall include parking requirements and solutions for the existing marina / restaurant customers and trades during project construction;
- (ii) The Developer must design and construct cyclists access to the project via Nelson Avenue and /or Wolseley Street.

(b) Off-Site Works:

- (i) Developer must re-instate Nelson Avenue and Wolseley Street to conform with the Horseshoe Bay Streetscape Standard. Detailed design and cost estimates must be completed and approved by the District prior to the issuance of Building Permit and construction must be completed prior to the issuance of Occupancy Permit. Based on the approved cost estimate, a Letter of Credit must be submitted to the District prior to the issuance of BP.
- (ii) Developer must relocate the trail head north of the project prior to the issuance of OP.

Storm Water:

(a) Civil Works:

- a. Prior to the issuance of Building Permit, the Developer must submit a "Stormwater Management Plan" SWMP to the District for approval. The SWMP shall include details of outfall structure via Sewell's commercial area to the ocean and the potential impact on marine environment.
- b. Prior to the issuance of Occupancy Permit, the Developer must construct a stormwater ditch along the north boundary of the project to manage storm runoff from the area adjacent to the site as per the SWMP.

Sanitary:

(a) Civil Works:

- a. Prior to the issuance of Building Permit, the Developer shall provide the design of the on-site sanitary storage tank and pump installation to the District for approval.

(b) Off-site works:

- a. Upgrade 230 m of existing sanitary sewer from the Lands to the sanitary pump station including manholes and connections. Construction to increase pipe size from 200mm to 300mm diameter.
- b. The Developer must provide a cash deposit of \$200,000 for the off-site works

Water:

(a) Civil Works:

- a. Prior to the issuance of the Building Permit, the Developer must submit to the District a "Fire Flow Calculation" FFC by a Fire Protection Consultant of the new development based on the Fire Underwriters Survey (FUS) Guidelines.

(b) Off-Site Works:

- a. Prior to the signing of the Works & Services Agreement, the Developer must provide the District a cash deposit of \$ 400,000 for the upgrade of watermain on Nelson Avenue from 200mm to 250mm diameter main.
- b. If the FFC is 200l/s or higher, the Developer must provide a cash deposit of \$ 1,300,000 (prior to the issuance of BP) for the upgrade of watermain on Argyle Avenue and Imperial Avenue from 200mm to 250mm diameter main, and the upgrade of water reservoir on Madrona Crescent.

SCHEDULE "E"

Master Plan Area

