

MEMORANDUM OF UNDERSTANDING

**A MEMORANDUM OF UNDERSTANDING WITH RESPECT TO DEVELOPMENT
OF THE FOOTHILLS LANDS**

BETWEEN:

District of Lantzville
7192 Lantzville Road
Lantzville, B.C.
V0R 2H0

(the "District")

AND:

Lone Tree Properties Ltd.

c/o Storm Mountain Development Corporation
1130 15th Street West, North Vancouver, British Columbia,

V7P 1M9 ("Lone Tree")

(collectively referred to as the "Parties")

WHEREAS:

A. Lone Tree is the owner of the following parcels of land located within the District's boundaries:

PID 009-438-904; Block 794, Nanoose District;

PID 000-060-542; Block 206, Nanoose District (situate partly within the Wellington District)

PID 000-060-569; That part of Block 389, Wellington District, Lying to the South West of a Straight Boundary Joining Points on the Westerly and Easterly Boundaries of Said Block, Distant 4888.8 Feet and 1050.9 Feet Respectively From the South West and South East Corners of Said Block;

PID 000-060-097; Block 471, Nanoose District, Except Parts in Plans 27114 and VIP78883; and

PID 026-290-847; Lot A, Block 471, Nanoose District Plan VIP78883

(collectively, the "Foothills Lands").

B. Lone Tree acknowledges that a former proposed development of the Foothills Lands was earlier conceived before the recession as subject to the conditions set out in a s. 219 covenant (the “Covenant”) which is still registered on title to the Foothills Lands.

C. The parties would like to amend the development plans that were previously agreed upon by the former owner of the Foothills Lands and the District.

D. The Parties agree that this MOU is not binding, but by signing the MOU the Parties indicate their acceptance of the principles contained herein and accept their respective responsibilities leading up to the intended creation of binding agreements to advance the development of the Foothills Lands.

THE PARTIES AGREE AS FOLLOWS:

Modified Agreement

1. The Parties will, pursuant to s. 219(9) of the *Land Title Act*, RSBC 1996, c. 250, execute and register a replacement agreement of the Covenant that is currently registered on title to the Foothills Lands (the “Modified Agreement”) in order to carry out the terms and conditions of this MOU.
2. The Parties agree that the Modified Agreement will be drafted and registered by the District’s legal counsel to the mutual satisfaction of the Parties.
3. The Parties agree that the Modified Agreement will provide for the following:
 - a. a requirement for an initial dedication of 900 acres of parkland to the District by Lone Tree upon execution of a new phased development agreement and the final adoption of amended zoning and official community plan amendment bylaws to accommodate density relocation, which parkland shall be comprised of a squared off portion of those lands intended for the ‘Initial Park Dedication’ on Schedule ‘A’ to the Covenant, provided there is reserved reasonable mutually acceptable accommodation for wells and water service lines and necessary water exploration and access in or through the parkland area and to that end the District agrees to grant a licence of occupation to Lone Tree over specified areas of the park for such exploration and access;
 - b. a transfer of density from the parkland area to the Urban Containment Area, to provide for a larger and more cohesive park, to protect the park from unnecessary major servicing and utility corridor encroachments (while providing for water lines and exploration and related access), and to save servicing repair, maintenance and replacement costs;
 - c. an enforcement provision if the Covenant or Phased Development Agreement, as amended by the Modified Agreement, is breached;
 - d. a transfer of land by Lone Tree for a fire hall and public works yard for the District in exchange for the District giving up the community centre that is currently required under s. 4(a) of the Covenant; and
 - e. following completion of a survey, and in substitution for all the items contained in Schedule B of the Covenant, a transfer of title in fee simple by Lone Tree to the

District of an area of the lands depicted in Schedule "A" of the Covenant, being approximately 200 acres, on a sequential basis in conjunction with final approval of Lone Tree subdivision applications, subject to a mutually acceptable restrictive covenant restricting the nature and timing of its development for uses other than municipal services and administration, but subject always to the permissible built density on the remaining Lone Tree lands (those not gifted to the District) being capable of an overall development density of 730 residential units.

4. The Parties acknowledge and agree that the obligations set out in the Covenant that is currently registered are binding and enforceable by the District as against Lone Tree until the Modification Agreement is executed and registered.

Phased Development Agreement

5. The Parties will enter into a Phased Development Agreement pursuant to s. 905.1 of the *Local Government Act*, which will address the following:
 - a. the provision of park land to the District by Lone Tree;
 - b. the location of the park;
 - c. agreement by Lone Tree to register a covenant under s. 219 of the *Land Title Act* and section 905.1(4)(d) of the *Local Government Act* on terms to be agreed to give effect to this MOU and the terms of the phased development agreement;
 - d. in addition to the District's application fees and charges as required by bylaw, reimbursement by Lone Tree to the District for the District's legal fees in relation to the following:
 - i. drafting the Modified Agreement and this MOU; and
 - ii. drafting the Phased Development Agreement and the bylaw by which the District can enter into the PDA; and
 - iii. reviewing and commenting on the revised Zoning Bylaw, amendment to the OCP, and reviewing and commenting on notices and public hearing documents, all of which will be required as a result of the shift in density;
 - e. agreement that the District cannot downzone the Foothills Lands for 20 years, provided the Inspector approves a term of 20 years for the PDA;
 - f. agreement by Lone Tree that it will make a community amenity contribution to the District, in an amount of \$7,945 per approved residential dwelling unit on the Foothills Lands, to be paid at the time of issuance of a building permit, up to a maximum of \$5,800,000.
6. The parties acknowledge and agree that the Phased Development Agreement will be considered by Council at the same time as the Zoning amendment and the OCP amendment.

Water

7. Lone Tree will explore the possibility of Lone Tree obtaining water from on-site wells. If on-site water is sufficient to meet the District standards, Lone Tree agrees to create a community water system in accordance with the District standards of the day, noting that the current standards are for wells with a minimum 50 gallons per minute (“GPM”) production requirement. Upon completion of each part of the water system to serve a phase of Lone Tree’s development and as a condition of subdivision approval for that phase, the water system will become part of the District’s system. The District agrees that once the District’s Wellfield Management Plan and Water Quality Assessment is complete, the parties can revisit the issue of water production requirements.
8. If Lone Tree is not able to provide on-site water sufficient to meet the District standards, the District agrees that it will consider granting to Lone Tree connections to the Nanaimo system for up to 16 Foothills premises each calendar year, subject to the payment of applicable District development cost charges, connection fees and user fees. The parties acknowledge and agree that the District’s consideration of the provision of water connections as set out above is subject to the following:
 - a. the District having an agreement with Nanaimo for the provision of water and, second; and
 - b. to Council’s unfettered discretion.

Road Dedication

9. Lone Tree agrees that, upon the granting of a development permit subsequent to execution of a new Phased Development Agreement and the Modified Agreement, it will dedicate to the District the lands comprising the existing graded gravel main road alignment running through the Foothills Lands, and at such time as Lone Tree develops lands adjacent or abutting the road, Lone Tree will then at its cost develop the road to servicing standards set out in the Phased Development Agreement and in keeping with the District’s Bylaw 55. It is acknowledged that the actual travelled road area may temporarily require routing by way of an existing easement over private land.

Reservoirs

10. Lone Tree agrees that it will contribute land for one reservoir to the District as an amenity that will be owned by the District. Lone Tree shall also pay 100% of the cost of the construction of the reservoir in accordance with District standards and specifications as designed by professional engineers acceptable to the District. Lone Tree agrees that the reservoir will provide capacity for an additional 400,000 gallons to exclusively serve the community as a whole above and beyond the capacity required to service the development on the Foothills Lands, noting that the current requirement to service the development on the Foothills Lands is 1,000,000 gallons. Lone Tree also agrees that it will provide land for a wet well and a pump station and that it shall also pay 100% of the costs of the construction of the wet well and pump station. The land for the
 - (a) reservoir, and
 - (b) for the wet well and pump station

will be located on sites reasonably acceptable to the District.

Development Permits

11. Lone Tree acknowledges that the Foothills Lands are located in development permit areas and that they are subject to the requirement to obtain a development permit prior to proceeding with development of the Foothills Lands.

General

12. The Parties acknowledge and agree that nothing in this MOU affects the statutory duties or authority of the District under the *Community Charter, Local Government Act*, and other applicable enactments.
13. The Parties acknowledge and agree that the District's ability to enter into the binding legal agreements proposed under this MOU and its ability to adopt amendments to its Zoning Bylaw and OCP are subject to the approval of Council of the District, which approval is subject to Council's absolute unfettered discretion.

EXECUTED in Lantzville, British Columbia on the 4th day of September
20 14.

On behalf of Lone Tree Properties Ltd.



Allard Ockeloen

On behalf of the District of Lantzville



Mayor Jack de Jong



Twyla Graff, CAO