

DEVELOPER'S AGREEMENT

File No.

THIS AGREEMENT dated the _____ day of _____, 200_____.

BETWEEN:

THE CORPORATION OF THE CITY OF PORT COQUITLAM
2580 Shaughnessy Street
Port Coquitlam, BC V3C 2A8

(the "Covenantor")

OF THE FIRST PART

AND:

(the "Developer")

OF THE SECOND PART

WHEREAS the Developer has agreed to purchase and proposes to develop a portion of the lands within the City of Port Coquitlam, in the Province of British Columbia, and more particularly known and described as:

(the "lands")

AND WHEREAS the Developer, by one or both of "Subdivision Servicing Bylaw, 1987, No. 2241" and "Development Management Bylaw, 1987, No. 2242", is required as a condition of approval of subdivision or issuance of a building permit to construct and install a complete system of works and services required in connection with the said subdivision or building permit to the standards set forth in the Subdivision Servicing Bylaw, 1987, No. 2241, to the lands, on highways immediately adjacent to the lands and on the lands;

AND WHEREAS the Developer desires approval of a subdivision plan or issuance of a building permit in respect of the lands, before completing the construction and installation of all works and services required by the bylaws;

AND WHEREAS the Developer has agreed to assign and transfer unto the City all of its right, title, and interest in the works and services, as they are constructed, free and clear of any encumbrances for the City's own and unfettered use absolutely;

NOW THEREFORE this agreement witnesseth that in consideration of the premises and in consideration of agreement by the City to permit the construction of the works and services after the approval of the subdivision or issuance of the building permit, the Developer covenants and agrees as follows:

1. In this Agreement:

“Complete or Completion” or any variation of these words when used with respect to the works and services referred to herein means completion to the satisfaction of the City Engineer of the City, acting reasonably, when so certified by him in writing.

“City Engineer” means the City Engineer for the City and his duly authorized assistants or such Consulting or other Professional Engineers as may be appointed to act for the City.

“Works” means all works and services required to be done for the execution and the completion of this Agreement to the satisfaction of the City.

2. The Developer covenants and agrees to:

- a) Complete all requirements and construct all Works as listed on the “Works and Services Checklist” signed by the City Engineer, which is attached as Schedule “A” to this agreement.
- b) Administration and inspection fee will be paid to the City prior to the approval of any subdivision plan or issuance of any building permit for the Lands.

3. In carrying out the prescribed Works the Developer shall:

- a) Construct all roads, storm sewers, sanitary sewers, watermains, street lighting, curbs, sidewalks, and boulevard landscaping within the proposed streets, lane allowances and rights-of-way to the approved design and specifications prescribed by Subdivision Servicing Bylaw, 1987, No. 2241, and any changes to the approved design must be approved by the City Engineer.
- b) Pay the full costs of all connection by the City of the proposed utilities to the existing water distribution and sewerage systems.
- c) Undertake to keep damage to City works and services existing on the date of the Agreement to a minimum and any damage or pavement removal shall be repaired to the reasonable satisfaction of the City Engineer.
- d) Comply with the provisions of the *Highway Act* R.S.B.C. 1996, c. 188 and amendments thereto, and all applicable bylaws and regulations of the City throughout the construction of the Works.
- e) Not deposit any material or debris upon any City roads throughout the construction of the Works and the City may forthwith at the expense of the

Developer remove any material or debris that should be deposited upon any road during the construction of the Works, the costs of such removal to be determined by the City Engineer and in the event that any invoice of the City for the removal of such material or debris shall remain unpaid after thirty (30) days of receipt of same by the Developer, the City is authorized to deduct the amount of such invoice from the deposit provided under Section 6 of this Agreement.

- f) Provide competent survey layout and site supervision by the same professional engineer responsible for the design drawings and specifications is achieved by the Developer and to record the details of any field design or construction changes to the design drawings and to record all of the geometric information for preparation of “as-constructed” drawings.
 - g) Not employ any person who, in the reasonable opinion of the City Engineer is unfit or not skilled in the work assigned to him and the Developer will at all times, in connection with the execution of the work, keep and employ a competent general superintendent capable of speaking, reading, and writing the English language, and any explanations, orders, instructions, directions, and requests given by the City Engineer to the superintendent shall be deemed to have been given to the Developer.
4. The Developer shall complete the construction and installation of the Works to the reasonable satisfaction of the City Engineer by the **day of** , **200**.
5. Upon completion of the Works the Developer covenants and agrees:
- a) To assign to the City all of its rights, title, and interest in all the Works.
 - b) To grant to the City all statutory rights-of-way required by the City for maintenance, repair, and replacement of the Works, in a registerable form satisfactory to the City's Solicitor.
 - c) To at all times hereafter execute and deliver at the request of the City all such further transfers, agreements, documents, instruments, statutory rights-of-way, acts, deeds, and assurances and to perform all such acts and things as may be necessary to give full effect to the intent and meaning of this Agreement.
 - d) To at its own expense modify, reconstruct, and reinstall all Works which have not been installed to the reasonable satisfaction of the City Engineer, the satisfaction of the City Engineer being conclusively evidenced by a Certificate of Completion signed by the City Engineer.
 - e) To submit to the City final as-constructed drawings of all of the Works in the form and according to the standards specified in Subdivision Servicing Bylaw, 1987, No. 2241.

6.
 - a) As security for the due and proper performance of all of the covenants and agreements in this Agreement contained, the Developer has deposited with the City by cash or irrevocable letter of credit the sum of \$.
 - b) The Developer agrees that if for any reason the Works are not completed pursuant to Sections 2 and 3 of this Agreement, by the date specified in Section 4, the City may enter upon the Lands and complete the Works in whole or in part at the cost of the Developer and deduct from the deposit held by the City the cost of such completion, and the balance of the deposit shall be returned to the Developer, less any additional administration fees or costs required.

If there is insufficient money on deposit with the City for completion of the Works, then the Developer will pay such deficiency to the City immediately upon receipt of the City's account for completion. It is understood that the City may complete the Works either by itself or by contractors employed by the City.
 - c) If the Works are completed by the Developer as herein provided, then the deposit shall be returned to the Developer, without any interest accrued on the deposit.
7. Pursuant to Section 943 of the *Local Government Act*, R.S.B.C. 1996, c. 323, the Developer covenants and agrees to comply with any changes in subdivision requirements or standards enacted by Bylaw prior to the actual commencement upon the lands of the Works contemplated by this Agreement.
8. The Developer covenants and agrees to:
 - a) Maintain the Works to be built pursuant to this agreement in complete repair for a period of one (1) year from completion thereof as certified by the City Engineer.
 - b) Remedy any defects appearing within a period of one (1) year from the date of such completion of the Works 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 City, its servants or agents, or acts of God.
 - c) Deposit with the City for period of one (1) year from completion of the Works, as certified by the City Engineer, the sum of 10% of the amount in Section 6(a) by cash or irrevocable letter of credit and should the Developer fail to maintain the Works, remedy any defect or pay for any damage resulting therefrom, the City may deduct the cost of completing the works, remedying the defect or paying the damage from the said deposit.
9. During the construction and one year maintenance period the Developer RELEASES, INDEMNIFIES, AND SAVES the City HARMLESS from and against:
 - a) Any liability arising whatsoever from the construction or installation of the prescribed Works and any damage thereby caused, directly or indirectly, except that arising from negligence of the City.

- b) All costs arising directly or indirectly from construction, repair, or maintenance by the City of any real or personal property in whole or in part which is affected by the Works and the City by duty or custom is obliged, directly or indirectly, in any way to any degree, to construct, repair or maintain.
 - c) All expenses and costs incurred by reason or liens for non-payment of labour or material, worker's compensation assessments, unemployment insurance, federal or provincial tax, check-off or encroachments owing to mistakes in surveying.
10. The Developer covenants and agrees that the City does not, by its approvals, inspections or acceptance of the Works, warrant or represent that the Works are without fault or defect.
11. The City covenants and agrees that:
- a) It will permit the Developer to perform the prescribed Works on the terms and conditions herein contained.
 - b) It will issue a Certificate of Completion signed by the City Engineer upon satisfactory completion of all the requirements of this agreement save and except the requirements of Section 8.
 - c) Upon satisfactory completion by the Developer, in accordance with the schedule of release shown in Schedule "C" to this Agreement, the City may reduce the amount of the Security Deposit defined herein, PROVIDED THAT a sufficient Security Deposit is maintained at all times to insure proper completion of all of the prescribed Works on the terms and conditions herein contained.
 - d) The City covenants and agrees that upon satisfactory completion by the Developer of all of the covenants and conditions in this Agreement, and without limiting the generality of the foregoing, including the maintenance of the Works constructed pursuant to this agreement in complete repair for a period of one (1) year, to provide the Developer with a Certificate of Acceptance of the works, signed by the City Engineer.
12. Notwithstanding any other provisions of this Agreement and notwithstanding the provisions of "City of Port Coquitlam Building and Plumbing Bylaw, 1997, No. 3108" and amendments thereto, the Developer covenants and agrees that the City may withhold the granting of an occupancy permit for the occupancy and/or use of any building or part thereof, constructed upon the Lands until all of the Works herein have been completed to the reasonable satisfaction of the City Engineer as evidenced by the Certificate of Completion provided to the Developer by the City Engineer.
13. It is understood and agreed that the City has made no representations, covenants, warranties, guarantees, promises or agreements (verbal or otherwise) with the Developer in relation to the subject matter of this agreement other than those in this Agreement, and no amendment hereto is valid unless in writing and sealed by both parties.

14. WHEREVER the singular or masculine is used throughout 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 hereto so require.
15. If any section, subsection, sentence, clause or phrase of this Agreement is for any reason held to be invalid by a court of competent jurisdiction, the invalid portion shall be severed and the decision that is invalid shall not affect the validity of the remainder.
16. Time is of the essence of this Agreement.
17. THIS AGREEMENT shall enure to the benefit of and be binding upon the parties hereto, their respective heirs, executors, administrators, and assigns.

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

THE CORPORATE SEAL OF)

)

_____)
was hereunto affixed in the presence of:)

c/s

)

)

_____)
Authorized Signatory)

)

_____)
Title)

)

)

SIGNED, SEALED, AND)

DELIVERED by the above named in)

the presence of:)

)

_____)

Witness)

)

_____)

Address)

DEVELOPER(S) - Sign Here

)

_____)

Occupation)

)

)

The Corporate Seal of THE)

CORPORATION OF THE CITY OF)

PORT COQUITLAM was hereunto)

affixed in the presence of:)

)

_____)

Mayor)

Authorized Signatory)

)

_____)

City Clerk)

Authorized Signatory)

c/s

CITY OF PORT COQUITLAM

SCHEDULE OF SECURITY RELEASES

Release of Amounts Required to Guarantee Construction of Essential Services to New Subdivisions and Other Developments

WATERWORKS

At such time as this work has been completed less tie-ins, flushed, hydrostatically tested, disinfected, and finally flushed to the City's standard, 90% of the amount required as security for waterworks installations will be released, less 10% to cover as-constructed drawings if these have not been completed.

SANITARY SEWER, STORM SEWER, SANITARY PUMP STATIONS & WATER PRESSURE REDUCING STATIONS

At such time as this work has been completed (with the exception of raising manhole frames and grates), 90% of the amount required as security for sanitary sewer installation will be released, less 10% to cover as-constructed drawings if these have not been completed.

ROADS, LANES

At such time as the road work has been completed with the exception of hot mix pavement, 50% of the amount required as security will be released. At such time as all of the road work has been completed with the exception of the final lift of hot mix pavement, 80% of the amount required as security for road works will be released less 10% to cover as-constructed drawings if these have not been completed. At such time as all of the road work has been completed, 90% of the amount will be released. The remaining 10% will be held for the one year maintenance period.

SIDEWALKS

At such time as this work has been completed, 90% of the amount required as security for sidewalks will be released, less 10% to cover as-constructed drawings if these have not been completed.

CURB & GUTTER, BOULEVARDS

At such time as the curb & gutter and boulevards have been completed, less the topsoiling and seeding of the boulevards, 70% of the amount required as security for curb & gutter and boulevards will be released, less 10% to cover as-constructed drawings if these have not been completed. Boulevard completion and adjustment of risers may be deferred to a suitable season or until the majority of house building activity has ceased. At such time as all boulevard work is completed, 90% of the amount required for boulevards will be released.

STREET LIGHTING

At such time as this work has been completed and the Certificate of Inspection has been received from the Provincial Electrical Inspector, 90% of the amount required for street lighting will be released, less 10% to cover as-constructed drawings if these have not been completed.

UNDERGROUND ELECTRICAL

At such time as this work has been completed and Certificates of Acceptance have been received from the respective utility companies, 100% of the amount required for underground electrical services will be released. In the case of BC Hydro, as-constructed drawings may be substituted for Certificates of Acceptance.

NOTES:

1. The release of security amounts for any item during the construction period does not signify a certificate of completion for that specific item of work.
2. A certificate of completion can not be issued until all of the required items of work have been satisfactorily completed with the exception of boulevard landscaping and the final lift of hot mix asphalt paving.
3. A certificate of completion also can not be issued until as-constructed drawings prepared by a Professional Engineer are submitted to the Engineer. The Developer is required to engage the services of a Professional Engineer during construction in order to ensure that as-constructed drawings are prepared to the required standard.
4. Upon submission of satisfactory as-constructed drawings, the 10% security deposit held for completion of as-constructed drawings will be released.
5. Upon issue of the certificate of completion the one year maintenance period will commence for all works except the boulevard landscaping and final lift of paving.
6. Where the boulevard landscaping or final paving is deferred for longer than one year, the amount held as security for these works will be indexed in proportion to the tendered price for paving in the City of Port Coquitlam.
7. For the boulevard landscaping and final lift of paving, the one year maintenance period commences upon satisfactory completion of these works. New as-constructed drawings are not required for completion of these items.
8. Upon satisfactory completion of the one year maintenance period, the Engineer will issue a certificate of acceptance and the remaining 10% security amount will be released.