



ADOPTED THIS                      **11<sup>th</sup>**                      DAY OF                      **MAY**                      , **2015**,  
BY A                      **UNANIMOUS**                      DECISION OF ALL MEMBERS OF CITY COUNCIL PRESENT AND  
ELIGIBLE TO VOTE.

  
\_\_\_\_\_  
MAYOR

  
\_\_\_\_\_  
CORPORATE OFFICER

# Schedule "A"

## PHASED DEVELOPMENT AND PARKLAND DEDICATION DEFERRAL AGREEMENT

This Agreement dated for reference the \_\_\_ day of \_\_\_\_\_, 2014 is

BETWEEN:

**CITY OF PRINCE GEORGE**, a municipality incorporated under the *Local Government Act* having an office at 1100 Patricia Boulevard, Prince George, B.C. V2L 3V9

(the "City")

AND: **WILMARK HOMES LTD.** (Incorporation No. 0199454) as to an undivided 1/2 interest and **HEMOCRAFT CONSTRUCTION LTD.** (Incorporation No. 207043) as to an undivided 1/2 interest, each being a corporation having offices at 33677 Arcadian Way, Abbotsford, B.C. V2S 7T4

(collectively the "Owner")

WHEREAS:

- A. The Owner is the registered owner of land legally described as The South East 1/4 of District Lot 630 Cariboo District, Except Plan 18283 (the "Land");
- B. The Owner has applied to the City for amendments to the City of Prince George Official Community Plan and Zoning Bylaw by way of Bylaws No. 8584 and 8585 respectively (the "Amendment Bylaws") to permit an 85-parcel residential subdivision on the Land, in general conformity with Schedule A to this Agreement, and concurrently has requested the City to discharge the Land Use Contract registered on title to the Land in the Prince George Land Title Office on March 24, 1977 under No. M8141;
- C. In connection with the Owner's applications the Owner has undertaken to prepare a servicing brief (the "Servicing Study") identifying the water supply, sewage disposal and drainage works required to enable the Owner to subdivide the Land in accordance with Schedule A;
- D. In the event that the Owner's residential subdivision does not proceed in accordance with this Agreement, the City intends to reinstate the previous Rural B Official Community Plan land use designation of the Land and zone the Land for Agriculture and Forestry uses only;
- E. The Owner wishes to provide at the Owner's cost certain infrastructure improvements required for the development of the Land, and the parties wish to ensure pursuant to s. 905.1(5) of the *Local Government Act* that the provisions of the Zoning Bylaw as amended by Bylaw No. 8585 continue to apply to the Land for the period more particularly set out in this Agreement;

- F. The Owner and the City wish to defer the provision of park land required by s. 941 of the *Local Government Act* in respect of the Owner's subdivision of the Land, in accordance with the terms of this Agreement; and
- G. The Council of the City has given notice and held a public hearing and has, by Phased Development Agreement Bylaw No. 8596, 2014 (the "Authorizing Bylaw"), authorized the execution of this Agreement;

NOW THEREFORE in consideration of the mutual promises set out in this Agreement, the parties agree pursuant to sections 905.1 and 941(9) of the *Local Government Act* as follows:

#### **APPLICATION OF AGREEMENT**

- 1. This Agreement applies to the Land, and to any parcels of land into which the Land may be subdivided.

#### **ZONING BYLAW AMENDMENTS**

- 2. For the term of this Agreement, any amendment of the zoning designation of the Land on Schedule A to the Zoning Bylaw, to the AR3 zoning regulations set out in the Zoning Bylaw, or to the definition of any term used in the AR3 zoning regulations, does not apply to the Land except:
  - (a) as provided in section 905.1(6) of the *Local Government Act*; or
  - (b) to the extent that the Owner agrees in writing that the amendment or repeal shall apply to the Land, including by applying in writing for such amendment or repeal.
- 3. For certainty, and without limiting Section 2, the City agrees that any development permit or building permit that would be issuable in respect of the Land on the date of adoption of the Amendment Bylaws will be issued throughout the term of this Agreement in accordance with the Zoning Bylaw as amended by the Amendment Bylaws and the provisions and terms of this Agreement, despite any amendment or repeal of any bylaw provision specified in Section 2 that would otherwise prevent the issuance of the permit.
- 4. The Owner agrees that Section 2 shall cease to apply to the Land:
  - (a) if the Owner has not constructed the works and services described in Sections 9 through 14 by the dates or times specified in those sections, or entered into agreements with the City requiring the works and services to be constructed by specified dates and provided security for such construction;
  - (b) if the Owner has not deposited in the Land Title Office a subdivision plan or plans of the Land creating at least 33 parcels and installed to such parcels all services

required by the City's bylaws by the date that is 8 years following the date of enactment of the Amendment Bylaws;

- (c) if the parties have terminated the Agreement pursuant to Section 8; and
- (d) in any event, upon the expiry of the term of this Agreement,

and the Owner acknowledges that when Section 2 ceases to apply to the Land, the authority of the Council of the City to amend the Zoning Bylaw may be fully exercised in respect of the Land, including without limitation any portion of the Land that has not been subdivided and developed in accordance with the AR3 zoning regulations (the "Remainder"), without compensation to the Owner.

5. The Owner acknowledges that as of the reference date of this Agreement, the City has advised the Owner of its intention to initiate an amendment of the Zoning Bylaw to zone the Land for Agriculture and Forestry uses only, immediately upon the Owner's failure to construct the works and services as described in Section 4(a) or to deposit a subdivision plan or plans as described in Section 4(b), and agrees that:

- (a) for the purposes of s. 943 of the *Local Government Act*, any such amendment shall have immediate application to the Land, notwithstanding that the Owner may have made an application for subdivision of the Land prior to the date of the amendment; and
- (b) nothing that the Owner has done with respect to the development of the Land constitutes a commitment to use the Land in accordance with the Amendment Bylaws, and the Owner irrevocably waives any claim that such use is a lawful non-conforming use of the Land.

6. The Owner acknowledges that as of the reference date of this Agreement, the City has advised the Owner of its intention to initiate an amendment of the Zoning Bylaw to zone the Remainder for Agriculture and Forestry uses only, immediately upon the Owner's failure to deposit a subdivision plan or plans as described in Section 4(b), the termination of this Agreement pursuant to Section 8 or the expiry of the term of this Agreement, and agrees that:

- (a) for the purposes of s. 943 of the *Local Government Act*, any such amendment shall have immediate application to the Remainder, notwithstanding that the Owner may have made an application for subdivision of the Remainder prior to the date of the amendment; and
- (b) nothing that the Owner has done with respect to the development of the Remainder constitutes a commitment to use the Remainder in accordance with the Amendment Bylaws, and the Owner irrevocably waives any claim that such a use is a lawful non-conforming use of the Land.

### **TERM AND TERMINATION OF AGREEMENT**

7. The term of this Agreement is 10 years from the date of adoption of the Authorizing Bylaw.
8. The parties may terminate this Agreement prior to expiry of the term at any time by mutual written agreement. Neither party may terminate this Agreement unilaterally except as expressly set out herein.

### **SUBDIVISION OF THE LAND**

9. The Owner agrees to subdivide the land generally in accordance with Schedule A, which subdivision may be in phases, and the parties agree that the configuration of the subdivision, the road layout, the area and dimensions of lots and the number of lots may vary from that shown in Schedule A to comply with the requirements of the City's subdivision authorized person.

### **WATER SUPPLY**

10. The Owner shall at the Owner's cost and by December 31, 2017, provide water distribution infrastructure on Blackburn Road South to the Midland Road intersection, in order to provide a supply of water to the Owner's development on the Land.
11. The Owner agrees that the water distribution infrastructure must be capable of supplying to each residential dwelling on the Land a water supply for fire suppression purposes of at least 60 litres per second, and that in order to meet that standard the Owner may be required at the Owner's cost to replace the existing the City water distribution main north of the Midland Road intersection, install water supply works from another direction to establish a looped system, prescribed by the City to ensure that the required water supply is available to the Land.

### **SEWAGE DISPOSAL**

12. The Owner shall at the Owner's cost and by December 31, 2017, extend the City's sewer collector on Blackburn Road South to the Midland Road intersection and provide any downstream sewage collection, pumping or transmission works identified in the Servicing Study, in order to provide for sewage collection and disposal for the Owner's development on the Land.

### **DRAINAGE WORKS**

13. The Owner shall at the Owner's cost and by the date that such works are in the City's opinion required to provide service to subdivided portions of the Land, construct all such drainage works as have been recommended in the Servicing Study and approved by the City. In the event that the Servicing Study recommends the use of a storm water storage pond as shown on Schedule A and the Owner will not have dedicated the relevant area to the City as park by the time the operation of the storage pond is

required, the Owner shall grant to the City in respect of the area required for the storage pond and access to it, in a form satisfactory to the City, a statutory right of way for storm drainage and storm water storage purposes.

#### **HIGHWAYS AND HIGHWAY WORKS**

14. The Owner agrees that the portion of the Land shown as a westerly extension of Midland Road shall, when dedicated for highway purposes, have a dedicated width of 25 m and that the City may require that such highway be provided at the Owner's cost with a 3-metre wide median strip landscaped to the satisfaction of the City.
15. The Owner acknowledges that the City's subdivision authorized person may require, in connection with any subdivision of the Land that dedicates the abutting highway, that the Owner dedicate a highway 20 m in width to the City in respect of the emergency access shown on Schedule A connecting Marston Road to such abutting highway, and construct on the highway to the City's satisfaction a gravel road suitable for emergency vehicle access.

#### **DEDICATION OF PARK LAND**

16. If the Owner creates by subdivision at least 33 of the lots shown on Schedule A prior to the expiry or earlier termination of this Agreement, the Owner must dedicate a portion of the Land (the "Park Land") as park upon the deposit of the plan of subdivision of the Land that creates the 33<sup>rd</sup> lot, and the parties agree that the Owner shall dedicate as the Park Land that area shown on Schedule A as "Large Community Park & Pond" including the area shown as an emergency access off Marston Road. The parties agree that the area of the Park Land is 2.3 ha exclusive of any area required for the storm water storage pond.
17. The Owner agrees that the City may require the Owner to pay to the City, in lieu of the Park Land required by the preceding section, the amount that is equivalent to 5% of the assessed value of the Land for property taxation purposes in the calendar year in which the first subdivision plan of the Land was deposited, plus interest at the Bank of Canada prime interest rate plus 1% compounded annually from the date of deposit of the first subdivision plan to the date on which the payment is required.
18. If by the expiry or earlier termination date of this Agreement the Owner has created fewer than 33 lots by subdivision of the Land, the City may require on the expiry or termination date that the Owner pay to the City, in lieu of providing the Park Land, an amount equal to  $A/85$  times the amount described in the preceding section, where  $A$ =the number of lots that have been created by subdivision.
19. The obligations of the Owner under sections 16, 17 and 18 shall survive the expiry or termination of this Agreement.

### **AGREEMENT RUNS WITH LAND**

20. The Owner acknowledges that, upon the filing of a notice that the Land is subject to this Agreement with the registrar of land titles, the terms of this Agreement will bind every person who acquires an interest in the Land.
21. The City may, at the expense of the Owner, file a cancellation of a notice referred to in Section 19 in respect of any parcel into which the Land has been subdivided, if the obligations of the Owner in respect of that parcel under this Agreement have been fully satisfied.

### **AMENDMENT OF AGREEMENT**

22. The parties may in writing agree to minor amendments to this Agreement, and for that purpose a "minor amendment" is an amendment to the description of any of the works in any of Sections 10 through 15. No such minor amendment shall be binding upon the parties unless it has been reduced to writing and executed by the authorized signatories for both the City and the Owner.
23. The City may, prior to agreeing to such an amendment, convene a public hearing or other proceeding for the purpose of determining the opinion of members of the public to such amendment, notwithstanding that such a hearing or other proceeding is not required by the *Local Government Act*, and the Owner agrees to participate in such proceeding for the purpose of providing information to the public on the proposed amendment.

### **VARIANCES RESTRICTED**

24. The Owner acknowledges that neither the Board of Variance by order under s. 901 of the *Local Government Act* nor the Council of the City by development variance permit under s. 922 of the *Local Government Act* has jurisdiction to vary any provision of the Zoning Bylaw specified in Section 2 of this Agreement, for as long as this Agreement is in force

### **GENERAL TERMS AND CONDITIONS**

25. The obligations of the parties comprising the Owner shall be joint and several. Wilmark Homes Ltd. and Homecraft Construction Ltd. may make agreements between themselves as to the performance of their joint and several obligations under this Agreement.
26. The parties agree that the works and services described in Sections 9 to 14 shall be the subject of a works and services agreement between the parties pursuant to s. 940 of the *Local Government Act*, and will be constructed to the standards set out in such bylaw as the City may have adopted from time to time under s. 938 of the *Local Government Act*.

27. The Owner acknowledges that no part of the cost of the works and services described in Sections 10 to 15 is included in the calculations used to determine the amount of a development cost charge, or constitutes “excess or extended services” for the purposes of s. 939 of the *Local Government Act* such that the City is obliged to impose latecomer charges in respect of the use of the works and services by others.
28. Any notice permitted or required by this Agreement to be given to either party must be given to that party at the address set out above, or to any other address of which the party has given the other party notice in writing expressly for the purposes of this Agreement. Notices shall be delivered personally or sent by prepaid courier, utilizing a reputable courier company, and will be deemed to be received when delivered provided such delivery occurs prior to 3:00 pm on a business day, failing which the notice will be deemed to be delivered on the next business day. As used in this Agreement, the term “business day” means any day which is not a Saturday, Sunday or a holiday of general observance in the Province of British Columbia.
29. Except as expressly set out in this Agreement, nothing in this Agreement shall prejudice or affect the rights and powers of the City in the exercise of its functions under the *Community Charter* or the *Local Government Act* or any of its bylaws.
30. Any opinion, decision, act or expression of satisfaction or acceptance provided for in this Agreement may be taken or made by the City’s Director of Development Services, unless expressly provided to be taken or made by another official of the City.
31. No provision of this Agreement is to be considered to have been waived by any party unless the waiver is expressed in writing by such party. The waiver by any party of any breach by any of the other parties of any provision is not to be construed as or constitute a waiver of any further or other breach.
32. Whenever in this Agreement the City is required or entitled to exercise any discretion in the granting of consent or approval, or is entitled to make any determination, take any action or exercise any contractual right or remedy, the City may do so in accordance with the contractual provisions of this Agreement and no public law duty, whether arising from the principles of procedural fairness or the rules of natural justice or otherwise, shall have any application in the interpretation or implementation of this Agreement except to the extent that such duty arises as a matter of public law. Notwithstanding the foregoing, except as otherwise expressly set out herein, the City shall act reasonably in exercising its discretion.
33. The Owner shall indemnify and save harmless the City, its officers, employees, Council members, agents and others (the “City Representatives”) from and against any and all actions, causes of action, liabilities, demands, losses (but not loss of profits), damages, costs, expenses (including actual fees of professional advisors), fines, penalties and other harm of any kind whatsoever, suffered or incurred by the City or any of the City Representatives, directly or indirectly, arising from, resulting from, connected with or related to:

- (a) death, bodily injury, damage to or loss of any property or other incident or occurrence during the construction or operation of the amenities contemplated by this Agreement;
  - (b) any default or breach of this Agreement by the Owner; and
  - (c) any wrongful act, omission or negligence of the Owner or its directors, officers, employees, agents, contractors, subcontractors, licensees, or others for whom they are responsible in law with respect to the covenants and obligations of the Owner pursuant to this Agreement.
34. This indemnity shall survive the expiry of the term or earlier termination of this Agreement, in relation to any matter arising prior to such expiry or termination.
35. If the Owner is delayed or prevented from the performance of any covenant or agreement required hereunder by reason of any unavoidable cause, then performance of such covenant or agreement shall be excused for the period during which such performance is delayed or prevented and the time for the performance thereof shall be extended accordingly. For the purposes of this section, "unavoidable cause" means any event or contingency beyond the reasonable control of the Owner, including without limitation a delay caused by weather conditions, power failure, fire or other casualty, governmental laws, regulations or controls, civil commotion, insurrection, sabotage, invasion, rebellion, military or usurped power, war or war-like operations and acts of God, but excluding a delay caused by lack of funds.
36. Time is of the essence of this Agreement and will remain of the essence notwithstanding the extension of any dates.
37. The Owner acknowledges and agrees that the City, acting reasonably, may, despite any public law limitations on the withholding of development permits, building permit, and occupancy permits, withhold such permits for the purpose of ensuring compliance with and administering the terms of this Agreement. For greater clarity, the City shall only be entitled to withhold such permits when they are applied for by the Owner during any period of time when the Owner is in breach of its obligations under this Agreement, beyond any period of notice and opportunity to cure provided for herein. Further, in the event that the Owner, acting in good faith, disputes that it is in breach of its obligations under this Agreement, then on the application of either party the matter shall be submitted for speedy determination by a sole arbitrator appointed pursuant to the *Commercial Arbitration Act* of British Columbia, whose decision shall be final and binding upon the matter.

33. This Agreement may be executed in counterparts.

**CITY OF PRINCE GEORGE**

**By its authorized signatories:**

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**WILMARK HOMES LTD.**

**By its authorized signatories:**

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**HEMOCRAFT CONSTRUCTION LTD.**

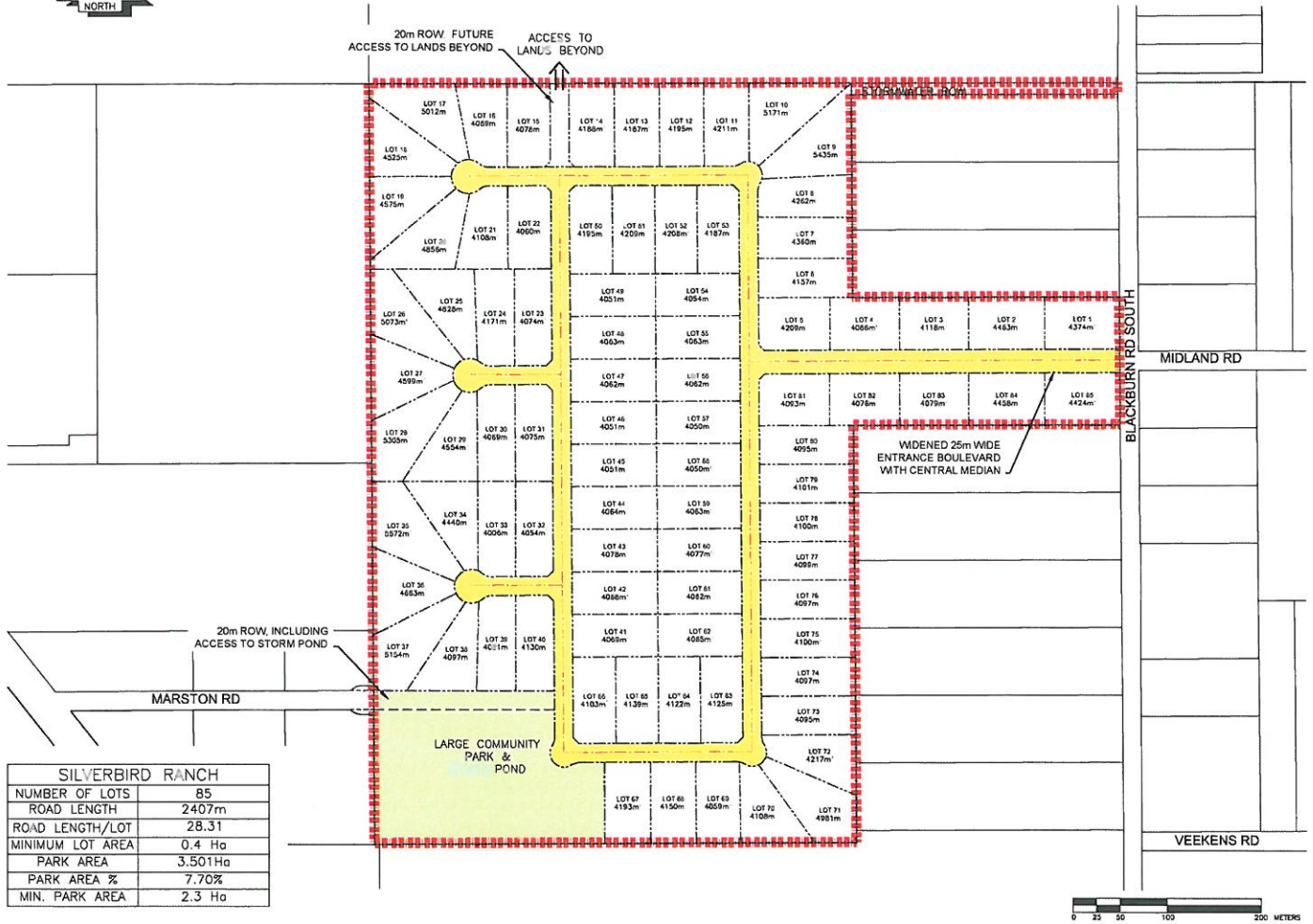
**By its authorized signatories:**

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**SCHEDULE A**

**Insert plan**



SILVERBIRD RANCH	
NUMBER OF LOTS	85
ROAD LENGTH	2407m
ROAD LENGTH/LOT	28.31
MINIMUM LOT AREA	0.4 Ha
PARK AREA	3.501Ha
PARK AREA %	7.70%
MIN. PARK AREA	2.3 Ha