

PART 2 – TERMS OF INSTRUMENT

RESTRICTIVE COVENANT – SBS RESTRICTIONS

BETWEEN:

0460463 B.C. LTD.
888 Sparkling Place
Vernon, British Columbia V1H 2K7

(the “**Transferor**”)

AND:

0460463 B.C. LTD.
888 Sparkling Place
Vernon, British Columbia V1H 2K7

(the “**Transferee**”)

WHEREAS:

- A. The Transferor is the registered owner in fee simple of those lands and premises situated in the City of Vernon, in the Province of British Columbia and more particularly described as:

NO PID NMBR

Lots 1 to 4 inclusive, Section 11, Township 13, Osoyoos Division Yale District, Plan EPP150749

(being the Servient Tenement and hereinafter individually and collectively referred to as the “**Lot**” or the “**Lots**”).

- B. The Transferee is the registered owner in fee simple of those lands and premises situated in the City of Vernon, in the Province of British Columbia and more particularly described as:

Parcel Identifier 026-849-933

Lot 5, Section 11, Township 13, Osoyoos Division Yale District, Plan KAP82174

(the “**Dominant Tenement**”).

- C. The Lots will be developed as part of the overall resort community known as “**Sparkling Hill**”.

- D. The Transferor wishes to grant, pursuant to Section 221 of the *Land Title Act*, a restrictive covenant over the Lots for the benefit and protection of the owners and occupiers from time to time of the Dominant Tenement on the terms and conditions set out in this Agreement.
- E. It is of mutual interest to the Transferor and Transferee that the parties enter into this Restrictive Covenant.

IN CONSIDERATION OF the sum of One Dollar (\$1.00) paid by the Transferee to the Transferor, the receipt and sufficiency of which are acknowledged, the parties covenant and agree as follows:

ARTICLE 1

RESTRICTIVE COVENANT

1.1 RESTRICTIVE COVENANT

- 1.1.1 The Transferor, its successors and assigns, and the owners and occupiers from time to time of a Lot and each of them shall not:
 - (a) subdivide, develop or otherwise make use of a Lot unless such subdivision, development or use is approved by the registered owner from time to time of the Dominant Tenement, such approval not to be unreasonably withheld, conditioned or delayed, and, in respect of any subdivision or development of a Lot, such subdivision or development is in accordance with any City of Vernon Development and Building Permits; or
 - (b) construct any improvement on a Lot unless such construction is in accordance with the Schedule of Restrictions attached hereto as Schedule "A".
- 1.1.2 Notwithstanding Section 1.1.1(a), a Lot may be used for residential purposes and purposes ancillary thereto, and the registered owner of the Dominant Tenement specifically approves such use.
- 1.1.3 This Restrictive Covenant shall bind and run with the Lots in favour of the Dominant Tenement and the registered owner thereof from time to time.

1.2 REMEDIES

If the Transferor breaches any of the terms of Section 1.1, the Transferee will be entitled to an injunction or injunctions to prevent any breach of such terms and may specifically enforce such terms in any action instituted in any court having jurisdiction. Such specific remedies are in addition to any other remedy to which the Transferee may be entitled at law or in equity.

1.3 TERMINATION

This Restrictive Covenant may be terminated only by mutual written agreement between the parties hereto and where so mutually agreed each party shall promptly, upon the request of the other, execute and deliver any document or instrument and perform any act or thing reasonably necessary to have the termination set out in this Section 1.3 herein reflected in the records of the Land Title Office. Any termination of this Restrictive Covenant will be without prejudice to any rights, duties or obligations of the parties hereunder arising prior to such termination.

ARTICLE 2 GENERAL

2.1 GENDER

Words in one gender include all genders, and words in the singular include the plural and vice versa. If the Transferor or the Transferee is comprised of more than one person, the covenants and obligations of all parties comprising the Transferor or the Transferee are joint and several and any notice given to one of such parties shall be deemed to have been given at the same time to such other party.

2.2 INTERPRETATION NOT AFFECTED

In this Instrument, the use of separate articles, sections, parts and headings is for the convenience of reference only and will not affect how this Instrument is interpreted.

2.3 SEVERABILITY

If any article, section or part of this Instrument is found to be partially or wholly illegal or unenforceable, then such articles, sections or parts will be considered to be separate and severable from this Instrument and the remaining articles, sections or parts of this Instrument, as the case may be, will be unaffected thereby and will remain and be enforceable to the fullest extent permitted by law as though the illegal or unenforceable articles, sections or parts had never been included in this Instrument.

2.4 GOVERNING LAWS

This Instrument will be governed by and construed in accordance with British Columbia law and applicable Canadian law and will be treated in all respects as a British Columbia contract.

2.5 SUBMISSION TO JURISDICTION

Each of the Transferor and Transferee will:

- a) submit to the jurisdiction of the British Columbia courts;
- b) if not incorporated or registered in British Columbia, appoint an agent to receive service of any process in British Columbia; and
- c) if any appointed agent is required, notify the other of the name and address of its appointed agent.

2.6 LEGISLATION

In this Instrument any reference to legislation includes a reference to the legislation and to any regulations made under that legislation as that legislation or those regulations may be amended or re-enacted from time to time.

2.7 BINDING EFFECT

Subject to Section 2.9, this Instrument will enure to the benefit of and be binding upon the parties to this Instrument and their respective successors and assigns.

2.8 RIGHTS NOT AFFECTED

Nothing in this Instrument will prejudice or affect the rights, powers and remedies of the Transferee in the exercise of the Transferee's functions under any law, bylaw, order or regulation or in equity, all of which may be fully and effectively exercised by the Transferee in relation to the Transferor or the Lots as if this Instrument had not been made by the parties.

2.9 WHEN TRANSFEROR NOT LIABLE

Notwithstanding anything contained in this Instrument but subject to Section 2.11 and the proviso in this Section, the Transferor will not be liable under any of the covenants, agreements and obligations contained in this Instrument arising after the Transferor ceases to have any further interest in the Lots provided, however, that nothing herein shall waive or modify in any respect any of the rights of the Transferee hereunder or relieve the Transferor from causing the Transferor's covenants, agreements and obligations contained in this Instrument to be observed and performed prior to the Transferor ceasing to have such aforesaid interests.

2.10 FURTHER ASSURANCES

The Transferor will do or cause to be done all things and execute or cause to be executed all documents and give such further and other assurances which may be reasonably necessary to give proper effect to the intent of this Instrument.

IN WITNESS WHEREOF the parties hereby acknowledge that this Restrictive Covenant has been duly executed and delivered by executing the General Instrument attached hereto.

Schedule "A"

SCHEDULE OF RESTRICTIONS

1. No person will commence any improvements of any sort (collectively or individually herein referred to as "**Improvements**") including without limitation, any:
 - (a) excavation or removal of any fill, trees or ground cover;
 - (b) construction of any buildings or other improvements of whatsoever nature; or
 - (c) landscape treatment,on any of the Lots without first submitting such plans and specifications for the Improvements (the "**Plans and Specifications**") to Sparkling Hill Residences Development Ltd. (the "**Developer**"), for the prior written approval by the Developer, it being the intention that all Improvements (and the renovation and repair thereof) within the subdivision be constructed by an accredited, licensed residential builder, such builder also being subject to the prior written approval by the Developer, and be controlled and unified as to size, design, siting, height, setbacks, types of materials used and exterior colour schemes for the benefit of the subdivision as a whole.
2. No alterations or modifications to any Improvements shall be made without prior written approval of the Developer.
3. Without limiting the generality of section 1 or section 2:
 - (a) no removal of any trees, foliage, ground-cover or other natural features will be carried out at any time on the Lots.
 - (b) no structure of a temporary character, including mobile homes, recreational vehicles (RVs), camper trailers, tents, shacks or other outbuildings shall be used for residential purposes on a Lot.
 - (c) no construction trailers, field offices or the like may be brought onto a Lot.
4.
 - (a) No person shall, after commencing construction of any Improvements on a Lot, discontinue the construction of such Improvements until the same are completed in all respects.
 - (b) No owner of a Lot shall fail to Substantially Complete (as hereinafter defined in paragraph 4(c) of these restrictions) the construction of the Improvements as to their external appearance, including finished painting, all in accordance with the approved Plans and Specifications, within the 24 month period after Commencing Construction (as hereinafter defined). "**Commencing Construction**" means when the owner has commenced excavation for construction on the Lot for the Improvement.

- (c) No Improvement shall be occupied by any person unless and until that Improvement, including the exterior, is Substantially Completed (as hereinafter defined). “**Substantially Complete**”, “**Substantially Completed**” or “**Substantial Completion**”, as applicable, means the issuance by the City of Vernon of a final, unconditional occupancy permit for the Improvement and the final completion of the Improvements.
 - (d) No house trailer, travel trailer, mobile home, camper, recreational vehicle, similar or other vehicle or structure designated for or capable of providing overnight accommodation, unlicensed vehicle, commercial truck or other commercial vehicle, will be permitted within a Lot.
 - (e) No boat, boat trailer, machinery or equipment (whether motorized or not) will be permitted within a Lot except within wholly-enclosed garages forming part of a residential dwelling.
 - (f) No visible billboard, placard, advertising or signage of any kind will be permitted within a Lot.
 - (g) No Improvement shall be constructed on a Lot other than one (1) single family dwelling.
 - (h) Accessory buildings including, but not limited to, detached garages and storage sheds are not permitted on a Lot.
 - (i) Fencing is not permitted on a Lot unless required to enclose a pool area for safety reasons.
 - (j) No change in the property lines of the Lot shall be made whether by consolidation, division, additions to or otherwise; provided, however, that the foregoing restrictions shall not apply if the Developer owns a Lot and the change in the property lines of the Lot is required by a municipal or other public authority or due to technical reasons (for example, but without limitation, slope stability, provision of roadways, utility requirements). No Lot or an Improvement constructed on a Lot shall be subdivided by way of fee simple or strata title plan of subdivision.
5. No Lot or Improvement constructed on such Lot shall be used for a business or commercial purpose. For the purposes of this section “a business or commercial purpose” shall include, without limitation, the rental or offer for rent of a Lot or an Improvement constructed on a Lot, or any portion thereof, for a period of less than ninety (90) consecutive days. For the purposes of this section, the term “rental” or any variation thereof shall include, without limitation: (i) any and all forms of tenancy or license relating to the occupancy of a Lot or an Improvement constructed on a Lot, or any portion thereof, for which any valuable consideration is provided; and (ii) any transient, short term stay or vacation accommodation of or on a Lot or an Improvement constructed on a Lot, or any portion thereof, through Airbnb, Vacation Rentals by Owner (vrbo.com), similar services or otherwise.