



Corporate Report

NO: R179

COUNCIL DATE: July 24, 2003

REGULAR COUNCIL

TO: Mayor & Council DATE: July 22, 2003

FROM: City Manager FILE: 6520-20
(Campbell Heights)

SUBJECT: Campbell Heights Development - Purchase and Sale Agreement

RECOMMENDATION

It is recommended that Council:

1. Approve the Purchase and Sale Agreement between the City of Surrey and Kingswood Capital Corporation and Progressive Construction Ltd., attached as Appendix "A" to this report; and
2. Authorize the Mayor and City Clerk to execute the Purchase and Sale Agreement on behalf of the City of Surrey.

PURPOSE

The purpose of this report is to obtain Council approval to execute a Purchase and Sale Agreement (the "Agreement") with a pair of private sector companies, related to the sale and development of City-owned lands in the Campbell Heights area of Surrey. The terms and conditions contained in the Agreement were based on a Council-approved Memorandum of Understanding ("MOU").

BACKGROUND

At a Closed Council meeting on Monday, July 26, 2002, Council approved a MOU between the City and the Campbell Heights Group (i.e., Kingswood Capital Corporation and Progressive Construction Ltd.) related to the sale, servicing and development of City-owned land in the Campbell Heights area of Surrey. The MOU is attached as Appendix "B" to this report. At that same meeting Council also directed staff to take all necessary actions, pursuant to Sections 185 and 187 of the *Local Government Act*, R.S.B.C. 1996, c. 323 (the "Act"), related to the public notification and disclosure and intention to provide "assistance" under tentative agreement and authorized staff to take all other appropriate actions to pursue a final agreement with the Campbell Heights Group, for consideration and approval by Council, in due course.

Staff has completed the actions necessary to satisfy the requirements of Sections 185 and 187 of the *Act* and has completed the drafting of a final agreement (the "Agreement") with Kingswood Capital Corporation and Progressive Construction Ltd. based on the MOU approved by Council.

DISCUSSION

The following is a synopsis of the basic terms of the draft Agreement that is attached as Appendix "A" to this report:

1. The Agreement is between the City and two private sector companies, Kingswood Capital Corporation and Progressive Construction Ltd. (the "Purchaser");
2. The City will sell, in 12 annual phases, approximately 265 acres (200 developable acres) of land on the east and west sides of 192 Street between 20 Avenue and 28 Avenue (the "City Land") at a price of \$35,000 per developable acre for the first phase (i.e., the land purchased in the first year) with the price of the land in subsequent phases increasing by 3% per year compounded over the term of the agreement. The City Land is illustrated in Appendix "C";
3. Prior to January 31, 2004, the City and the Purchaser will mutually agreed on the Development Cost Charge ("DCC") Works phasing schedule, the list of Project DCC Works to be funded by the City DCC By-law, together with a budget and scheduled timing of works which will be required to be constructed with each phase of the City Land. The timing of construction of the Project DCC Works will give priority to the City Land up to July 1, 2008;
4. The City and the Purchaser will equally fund up to a maximum amount of \$20 million (i.e., the City will be responsible for

providing funding of up to \$10 million) the installation of the Project DCC Works to the area to allow development of the City Land;

5. The Purchaser will be given credit against DCCs that are payable at the time of issuance of building permits on the City Land, up to the amount invested by the Purchaser in installing the Project DCC Works to the City Land;
6. The means by which the City will recover the amount it invests in installing the Project DCC Works to the City Lands are identified;
7. Subject to satisfying any requirements of the *Act* and any applicable municipal law, the City will not allow commercial, industrial or business development to proceed on lands in the Campbell Heights area other than on the City Land until July 1, 2008 except for large scale projects (i.e., 15+ acres);
8. The City is responsible for providing a certificate of compliance related to any contaminated lands that may be part of the City Land provided, however, that the cost to remediate any such land to obtain the certificate does not exceed \$28,000 per acre to a maximum of \$300,000 for the City Land to be purchased. If the costs exceed these values, the contaminated land can be remediated by the Purchaser at their own cost or be excluded from the agreement without substitution;
9. The City will undertake to modify the local area plan for Campbell Heights and to rezone the City Land on or before January 31, 2004 to provide that approximately 100 +/- acres of City Land may be used for "high end" light impact industrial uses and 100 +/- acres of the City Land may be used for business park uses. The proposed general land use pattern is illustrated in Appendix "D";
10. The Purchaser may choose not to proceed with the Agreement if, before January 31, 2004, the Purchaser does not enter into purchase contracts for the sale of at least 60 acres of the City Land;
11. The Purchaser will provide a letter of credit to the City as security in the amount of \$1.5 million to be held by the City through the full term of the Agreement;
12. The Purchaser will comply with all normal and applicable City by-laws, requirements, policies, fees and charges of the City and other agencies having jurisdiction with respect to the development of the City Land, except as specifically altered by the Agreement; and
13. The Purchaser may not assign the Agreement without the consent of the City.

Land Sale Price

A year has lapsed since Council approved the MOU and since the real estate market in some sectors has been very active, staff took action to confirm that the purchase price for the City Land is reasonable relative to the prevailing market. Mr. Stuart Carmichael, an accredited land appraiser, of Carmichael Wilson and Associates who undertook the appraisal of the City Land prior to the approval of the MOU, was requested to update the appraisal to current market conditions. He has submitted confirmation in writing to the City that the value of the City Land has not changed over the last 12 months and remains at \$35,000 per acre.

Staff Review

The City Manager, the General Manager, Planning and Development, the General Manager, Engineering and the General Manager, Finance, Technology and Human Resources have each assisted in preparing the Agreement and are satisfied that the City's interests have been properly addressed from all perspectives. As well, the City Solicitor was directly involved in drafting the Agreement and is satisfied that it adequately protects the City's interests while facilitating the opening of the Campbell Heights area for business development.

Notice

Upon Council approval of the Agreement, a notice pursuant to Sections 186 and 187 of the *Act* will be published in a local newspaper.

CONCLUSION

It is recommended that Council approve the Agreement between the City of Surrey and Kingswood Capital Corporation and Progressive Construction Ltd., that is attached as Appendix "A" to this report and authorize the Mayor and City Clerk to execute the Agreement on behalf of the City of Surrey.

Umendra Mital
City Manager

MDD:saw

Attachments:

- Appendix "A" – Purchase and Sale Agreement
- Appendix "B" – Memorandum of Understanding
- Appendix "C" – Map of City Land
- Appendix "D" – Proposed Plan

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Appendix "A"

PURCHASE AND SALE AGREEMENT

THIS AGREEMENT dated the 9th day of July, 2003.

AMONG:

CITY OF SURREY

having an office at 14245 – 56th Avenue
Surrey, British Columbia
V3X 3A2

(the “City”)

AND:

KINGSWOOD CAPITAL CORPORATION
a British Columbia company with an office at
#520 – 701 West Georgia Street
Vancouver, British Columbia
V7Y 1A1

(“Kingswood”)

AND:

PROGRESSIVE CONSTRUCTION LTD.
a British Columbia company with an office at
5591 No. 3 Road
Richmond, British Columbia
V6X 2C7

(“Progressive” and together with Kingswood, collectively, the “Purchaser”)

WHEREAS:

- A. The City owns the City Land.
- B. The City has agreed to grant the Purchaser an option to purchase the City Land and the Purchaser wishes to accept the grant of such option from the City.
- C. The Purchaser intends to develop in phases the City Land acquired by it as provided herein.
- D. The City and the Purchaser wish to enter into this Contract to set out their respective rights and obligations regarding the transfer and the

development of the City Land.

- E. The mutual objective of the City and the Purchaser is to create an internationally recognized industrial business park, which has been competitively positioned and marketed so that it will be a catalyst for significant business investment and job creation in the City. A more specific objective of the parties is to create development that will have a minimum average assessed valued including both land and improvements of One Million Six Hundred Thousand (\$1,600,000.00) Dollars per acre for each Developable Acre located in the City's IB-1 Industrial Zone and One Million Two Hundred Thousand (\$1,200,000.00) Dollars for each Developable Acre that is located in the City's IB-2 Industrial Zone.

NOW THEREFORE IN CONSIDERATION of the premises and the sum of One Hundred (\$100.00) Dollars and other good and valuable consideration paid by each of the parties to each other (the receipt and sufficiency of which is hereby acknowledged) each of the parties agrees as follows:

ARTICLE 1 – DEFINITIONS

1.1 In this Contract:

- (a) "Acres" means the total Developable Acres of the City Land to be acquired by the Purchaser pursuant to this Contract;
- (b) "Approving Officer" means any approving officer appointed to approve Subdivision Plans for the City;
- (c) "as amended" means amended from time to time whether amended before or after the Reference Date;
- (d) "Campbell Heights Area" means that area located in south-east Surrey, British Columbia, as outlined in heavy outline on the plans attached to this Contract as Schedule "B(1) - (7)";
- (e) "City" means the City of Surrey;
- (f) "City Conditions" mean those conditions precedent set out in Section 5.1;
- (g) "City Council" means the duly elected council of the City from time to time;
- (h) "City Development Cost Charge Bylaw" means Surrey Development Cost Charge Bylaw, 2002, No. 14650 passed by the City, as amended from time to time, in respect of the DCC Works to be installed on, in and around the Campbell Heights Area, pursuant to this Contract;
- (i) "City Land" means collectively those lands (or portions thereof) comprising approximately 264.7 acres, currently described as:
- (i) Civic address: 19191 – 20 Avenue
Legal description: Parcel Identifier: 015-384-705
The South East Quarter of the North East Quarter, Section 16, Township 7, New Westminster District
Size: 39.1 acres which excludes the portion of 192 Street that is a gazetted road;

(ii) Civic address: 19050 – 24 Avenue
Legal description: Parcel Identifier: 013-239-058
West Half of the North East Quarter of the North East Quarter, Section 16, Township 7, New Westminster District
Size: 19.7 acres which excludes the portion of 24 Avenue that is a gazetted road;

(iii) Civic address: 19178 – 24 Avenue
Legal description: Parcel Identifier: 013-239-023
East Half of the North East Quarter of the North East Quarter, Section 16, Township 7, New Westminster District
Size: 18.8 acres which excludes the portion of 192 Street and 24 Avenue that is a gazetted road;

(iv) Civic address: 19280 – 24 Avenue
Legal description: Parcel Identifier: 002-898-667
West Half North West Quarter, Section 15, Township 7, New Westminster District
Size: 77.5 acres which excludes the portion of 192 Street and 24 Avenue that is a gazetted road;

(v) Civic address: 2460 – 192 Street

Legal description: Parcel Identifier: 012-390-569
South Half Lot 1, Section 22, Township 7, New Westminster District, Plan 1834
Size: 4.6 acres;

(vi) Civic address: 19427 – 24 Avenue
Legal description: Parcel Identifier: 017-900-352
Portion of Lot A (BF51754), Section 22, Township 7, New Westminster District, Plan 1834
Size: 27.7 acres; and

(vii) Civic address: 2775 – 192 Street
Legal description: Parcel Identifier: 013-243-888
East Half of the South East Quarter, Section 21, Township 7, New Westminster District
Size: 77.3 acres which excludes the portion of 192 Street and 24 Avenue that is a gazetted road;

all of which are outlined in heavy outline on the sketch attached as Schedule “A” hereto;

(j) “City Lawyer” means a lawyer employed or retained by the City;

(k) “Closing Date” means those days which are specified in Section 2.1 or, if the appropriate Land Title Office is closed on any such day, then the next following day upon which it is open, provided that no such date shall be later than January 31, 2020, or such other date as may be mutually agreed between the parties;

(l) “Completion” or “Complete” or “Completed” means completion of construction of the DCC Works according to the requirements of the City;

(m) “Contaminants” mean any explosives, radioactive materials, asbestos, urea formaldehyde, chlorobiphenyls, hydrocarbons, fuels, gas, propane, oils, lubricants, methanol, odourants, grease, polychlorinated bithenyls, antirust, antifreeze, or other chemicals, chromate solutions, arsenic, cadmium, chromium, lead, or other minerals, underground or above ground tanks, pollutants, contaminants, deleterious substances, dangerous goods, dangerous, hazardous, corrosive or toxic substances, special or other waste, or any other substances the storage, manufacture, disposal, handling, treatment, generation, use transport, remediation, or release into the Environment, of which any Environmental Laws prohibit, control, regulate, or license;

(n) “Contaminated Lands” means any of the City Land in, under or over which Contaminants have been stored, kept, maintained, used, leaked, exposed, released, poured, emitted or otherwise discharged or migrated to;

(o) “Contract” means this document and attached schedules;

(p) “day” means a calendar day;

(q) “DCC Works Phasing Schedule” means the list of all DCC Works (including their design) to be funded pursuant to the City Development Cost Charge Bylaw relating to the Campbell Heights Area, together with their budget and schedule timing;

(r) “DCC Works” means the necessary engineering services and improvements to provide works and services to and in the Campbell Heights Area in accordance with the City Development Cost Charge Bylaw, including without limiting the generality of the foregoing, roadworks, sidewalks, curbs, lighting, water mains, sanitary and storm sewers;

(s) “Developable Acres” means the acreage of the City Land less any acreage therein relating to fisheries setbacks, wildlife and trail corridors, parkland, and rights of way and/or dedications for 28th Avenue, 24th Avenue, 20th Avenue and 192nd Street, Surrey, British Columbia, and “Developable Acre” means any one of the Developable Acres;

(t) “Development Approval” means the approval of zoning, subdivision and DCC Works by the City, the Approving Officer and all other applicable governmental authority and agencies;

(u) “Development Cost Charges” means all development cost charges set out in the City Development Cost Charge Bylaw as of the date of this Contract incurred or to be incurred, as the case may be, in respect of the design, installation and construction of the DCC Works;

(v) “Environment” means land including soil and everything on or below land, sediment deposited on land, fill and land submerged under water, air including all layers of the atmosphere, and water including oceans, lakes, rivers, streams, ground water and surface water;

(w) “Environmental Certificate” has the meaning given to such term in Section 3.1(c);

(x) “Environmental Laws” means all principles of common law and equity and all laws, statutes, regulations, rules, bylaws, remediation, pollution abatement or other orders, directives, standards, guidelines, permits, licences, and other lawful requirements from time to time, both before and after a Closing Date, of any Government Body having jurisdiction over the City Land, or the Environment forming part of or surrounding any of it, and related to or concerning the Environment, health, occupational health or safety, product liability, or the transportation of dangerous goods;

(y) “Four Year Period” has the meaning given to such term in Section 7.3(a);

- (z) "Government Body" means any federal, provincial, regional district, municipal, or other government authority, ministry, department or agency having jurisdiction over the City Land, including managers and other authorized persons under the **Waste Management Act**;
- (aa) "**Land Title Act**" means the **Land Title Act**, R.S.B.C. 1996, c. 250, as amended;
- (bb) "Land Title Office" means the Lower Mainland Land Title Office;
- (cc) "Letter of Credit" has the meaning given to such term in Section 2.5;
- (dd) "**Local Government Act**" means the **Local Government Act**, R.S.B.C. 1996, c. 323, as amended;
- (ee) "month" means a calendar month;
- (ff) "Option" means the option to purchase the City Land granted to the Purchaser pursuant to Section 2.1 of this Contract and the registrable form of the Option is attached to this Contract as Schedule "C";
- (gg) "Orphan Lands" means that portion of the City Lands which are deemed to be contaminated as determined by Dillon Consulting Limited and subdivided pursuant to Section 3.3.(b);
- (hh) "Permitted City Charges" mean those charges described on Schedule "D";
- (ii) "Phase" means each group of Developable Acres to be purchased by the Purchaser in accordance with Section 2.1 under this Contract and created pursuant to the applicable Subdivision Plan;
- (jj) "Project DCC Works" means those works and services forming part of the DCC Works, including design and ancillary costs, which are mutually agreed to by the Purchaser and the City to be required in advance or at the time of the Purchaser subdividing or servicing any part of the City Land;
- (kk) "Purchaser's Conditions" means those conditions precedent set out in Section 5.3;
- (ll) "Purchaser's Lawyer" means Koffman Kalef, Business Lawyers;
- (mm) "Purchase Price" means the amount determined and payable in accordance with Article 2;
- (nn) "Reference Date" means January 31, 2004;
- (oo) "Rezoning Plan" has the meaning given to such term in Section 5.1(b);
- (pp) "Service Agreement" means the service agreement specifying the requirements for provision of onsite services on the Developable Acres and services required as part of the Subdivision Approval in accordance with the Surrey Subdivision and Development Bylaw, 1986, No. 8830, as amended;
- (qq) "Subdivision Contracts" means the Service Agreement, the Section 219 covenants, statutory rights of way and other charges or encumbrances any Government Body or public utility may require the Purchaser to register against title to the City Land as a condition of approval of the Subdivision Plan or the provision of utilities or services to the City Land;
- (rr) "Substantial Performance" means issuance by the City of a final inspection certificate for the DCC Works prior to any maintenance period;
- (ss) "Subdivision Approval" means the approval by the Approving Officer of a Subdivision Plan;
- (tt) "Subdivision Plan" means subdivision, reference plans or explanatory plans from time to time necessary to create separate titles in the Land Title Office to the City Land, in compliance with the provisions of the **Land Title Act** and all other applicable legislation;
- (uu) "Term" means the term of twelve (12) years commencing on the Reference Date, subject to extensions pursuant to Sections 2.3 and 5.4;
- (vv) "Transfer" means a transfer of a fee simple title or titles of a Phase to the Purchaser or as the Purchaser shall direct in writing; and
- (ww) "**Waste Management Act**" means the **Waste Management Act**, R.S.B.C. 1996, c. 482, as amended.

ARTICLE 2 – OPTION TO PURCHASE

2.1 The City hereby grants to the Purchaser the exclusive and irrevocable

option to purchase all of the City's right, title and interest in and to the City Land on the terms and conditions contained in this Contract, free and clear of all liens, charges, and encumbrances, except the Permitted City Charges provided that the Purchaser has complied with the terms of this Contract, including without limitation the Purchaser's covenants in Section 4.2 (the "Option"). Except as contemplated in Sections 2.3 and 5.4 below, the Purchaser must exercise the Option as follows:

Phase	Minimum Total Developable Acres to be Purchased During Each Phase	Complete Exercise of Option on or Before	Closing Date: The Earlier of Thirty (30) Days After Each Exercise of the Option or the Following:
One (1)	Twelve (12)	September 30, 2004	October 30, 2004
Two (2)	Fifteen (15)	September 30, 2005	October 30, 2005
Three (3)	Fifteen (15)	September 30, 2006	October 30, 2006
Four (4)	Seventeen (17)	September 30, 2007	October 30, 2007
Five (5)	Seventeen (17)	September 30, 2008	October 30, 2008
Six (6)	Seventeen (17)	September 30, 2009	October 30, 2009
Seven (7)	Seventeen (17)	September 30, 2010	October 30, 2010
Eight (8)	Seventeen (17)	September 30, 2011	October 30, 2011
Nine (9)	Seventeen (17)	September 30, 2012	October 30, 2012
Ten (10)	Seventeen (17)	September 30, 2013	October 30, 2013
Eleven (11)	Seventeen (17)	September 30, 2014	October 30, 2014
Twelve (12)	Seventeen (17)	September 30, 2015	October 30, 2015

Notwithstanding the foregoing, the Purchaser shall be entitled to exercise the Option during any period set forth above in one or more separate transactions; provided, however, that in the event of the failure of the Purchaser to fully exercise its rights under the Option with respect to the minimum number of Developable Acres required for purchase in any period set forth above, or if the Purchaser does not pay the Purchase Price on the Closing Date for each acquisition of a portion of the City Land, then the Option will be deemed to be null and void and of no further force or effect and, in such event, this Contract shall terminate. The Purchaser covenants and agrees that it shall not register any charges in the Land Title Office against the Option including a mortgage.

2.2 The Purchase Price to be paid by the Purchaser to the City shall be, for each Developable Acres or a portion thereof comprising part of the City Land being purchased from time to time, as follows:

- (a) during the first (1st) year of the Term, the sum of Thirty-five Thousand (\$35,000.00) Dollars for each Developable Acre

plus a proportionate amount based on the area of any portion of a Developable Acre; and

(b) during each subsequent year of the Term, the Purchase Price for the immediately preceding year of the Term plus 3%.

Notwithstanding Section 2.1, the Purchaser will be entitled to exercise the Option during any period set forth in Section 2.1 for the purchase of more than that number of Developable Acres indicated therein and, in such event, the minimum number of Developable Acres required for purchase in any one or more subsequent periods, as the case may be, will be decreased accordingly. For example, if within Phase One (1) the Purchaser exercises the Option and purchases thirteen (13) Developable Acres, then the minimum number of Developable Acres required for purchase within the first year of Phase Two (2) shall be decreased from fifteen (15) Developable Acres to fourteen (14) Developable Acres.

2.3 Notwithstanding the foregoing, at the Purchaser's option, the Purchaser's minimum purchase of Developable Acres during any period specified in Section 2.1 may be reduced or deferred by that number of acres within the Campbell Heights Area where the owner of land other than the City Land has received final adoption of a rezoning bylaw (if applicable), registration of a Subdivision Plan in the Land Title Office (if applicable), and engineering servicing has been completed to the reasonable satisfaction of the City, subject to the following conditions:

(a) the Purchaser having a minimum of twenty (20) Developable Acres where the works and service construction drawings have been completed, approved by the City, are available to be tendered and construction of the engineering servicing completed such that a building permit could be issued within six (6) months;

(b) the Developable Acres deferred in any one (1) year by the Purchaser pursuant to this Section 2.3 will be equal to the lesser of that number of acres within the Campbell Heights Area where the owner of land other than the City Land has received final adoption of a rezoning bylaw (if applicable), registration of a Subdivision Plan in the Land Title Office (if applicable), and engineering servicing has been completed to the satisfaction of the City and two-thirds (2/3) of the minimum number of Developable Acres to be purchased by the Purchaser within such year; and

(c) the Purchaser will be entitled to exercise its right to purchase any land reduced or deferred for purchase pursuant to this Section 2.3 at a rate of up to seventeen (17) Acres per year for each year for three (3) years after the expiry of the Term.

2.4 The Purchase Price for the Developable Acres being purchased in respect of a particular Closing Date will be paid by the Purchaser to the City on such Closing Date.

2.5 As security for the Purchaser's 50% share of the Project DCC Works, the Purchaser shall, within three (3) days of the satisfaction or waiver of the conditions in Section 5.3, deliver or cause to be delivered to the City an irrevocable letter of credit (the "Letter of Credit") in the amount of One Million Five Hundred Thousand (\$1,500,000.00) Dollars on the City's usual terms and conditions except that the Letter of Credit is to be applied to the last \$1,500,000.00 owing pursuant to the Purchaser's contribution to the Project DCC Works. The Letter of Credit is to be reduced or returned when the Purchaser has paid 50% of the Project DCC Works up to a maximum of Ten Million (\$10,000,000.00) Dollars or the parties have agreed that further Project DCC Works will not be required.

2.6 The Purchaser may at any time register the Option in the Land Title Office against title to the City Land provided, however, that the Purchaser has delivered to the City the Letter of Credit pursuant to Section 2.5 above.

2.7 The Purchaser will be subject to paying amenity charges in the amount of \$3,352.25 from March 1, 2003 to February 29, 2004 per

Developable Acre or as otherwise adopted by City Council for each Developable Acre purchased by the Purchaser, which charges will be payable to the City at the time such Developable Acre is acquired.

ARTICLE 3 – CITY'S REPRESENTATIONS AND COVENANTS

3.1 The City represents to the Purchaser that:

- (a) upon adoption of the bylaw or passage of the resolution referred to in Section 5.1(a), the City has sufficient power and capacity to execute and deliver this Contract to the Purchaser, and to comply with its obligations under this Contract;
- (b) the City has good, safe-holding and marketable title to the City Land free and clear from all liens, charges, encumbrances, encroachments, defects in title, equities or claims except for Permitted City Charges; and
- (c) except for the Contaminants disclosed in the draft environmental report prepared by Dillon Consulting Limited and dated June 11, 2003 with respect to the City Lands (the "Environmental Certificate"), a copy of which has been delivered to the Purchaser, the City is not aware of any Contaminants that may have been released, spilled, leaked, pumped, poured, emitted, emptied, discharged, dumped or disposed of, or which have escaped, leached, or migrated from the City Land or from the Environment forming part of or surrounding it to, on or under adjacent lands or the Environment forming part of or surrounding such adjacent lands.

3.2 The City is not giving to the Purchaser, and the Purchaser is not requiring from the City, before or after the Reference Date or Closing Date any express or implied representation:

- (a) that the City Land does or does not comply with Environmental Laws;
- (b) that the City Land is or is not free from Contaminants;
- (c) that any Contaminants have or have not been released, spilled, leaked, pumped, poured, emitted, emptied, discharged, dumped or disposed of, or have or have not escaped, leached, or migrated from the City Land or from the Environment forming part of or surrounding it to, on or under adjacent lands or the Environment forming part of or surrounding such adjacent lands; and
- (d) that the City Land will or will not be environmentally or otherwise suitable for any purpose including occupation, development, sale, lease or generation of revenue.

3.3 The City covenants with the Purchaser that:

- (a) the City will carry out all required work, at its cost, provided that the cost does not exceed Three Hundred Thousand Dollars (\$300,000.00), in order to provide a certificate of compliance issued by a Government Body pursuant to applicable legislation for any Contaminated Lands comprising any whole or part of any Developable Acres acquired by the Purchaser under this Contract;
- (b) if the City, acting reasonably, determines that the cost described in Section 3.3 (a) exceeds Three Hundred Thousand Dollars (\$300,000.00) it shall apply to subdivide that portion of the City Land which has caused the cost described in Section 3.3(a) to exceed Three Hundred Thousand Dollars (\$300,000.00) and the Orphan Lands shall be excluded from the City Land for all purposes of this Contract; provided, however, that prior to the City applying to subdivide the Orphan Lands, the Purchaser shall have the unconditional and irrevocable option to remediate the Orphan Lands and, in such event, the City shall be responsible for the lesser of Twenty Eight Thousand Dollars (\$28,000) per Developable Acre of the City Lands or the first Three Hundred Thousand Dollars (\$300,000.00) of the costs associated with such remediation and the Purchaser shall be responsible for all costs in excess of such amount. The Purchaser's option to remediate the Orphan Lands shall be exercised by the Purchaser by giving written notice to the City within ninety (90) days of receipt by the Purchaser of written notice from the City that the City has determined that the cost described in Section 3.3(a) exceeds the lesser of Twenty Eight Thousand Dollars (\$28,000) per Developable Acre of the City Lands or Three Hundred Thousand Dollars (\$300,000.00);
- (c) within ninety (90) days after receipt of written notice from the Purchaser to do so, the City will remove any asphalt and concrete piles and any gravel piles that are in excess of the lot grading plan approved by the parties and that the Purchaser advises in writing it does not require, that are located on any of the Developable Acres comprising the City Land that are subject to such Transfer;
- (d) the City will permit overhead distribution power lines along 192nd Street and along 24th Avenue, Surrey, British Columbia provided, however, that service connections from such lines and all other wiring for local service be underground in relation to the development of the City Land; and

(e) the difference in the area of the City Land and the Developable Acres will be deemed to satisfy the 5% park dedication required pursuant to the provisions of ***The Local Government Act*** for all Phases.

ARTICLE 4— PURCHASER'S REPRESENTATIONS AND COVENANTS

4.1 The Purchaser warrants and represents to the City that:

(a) the Purchaser is a corporation duly incorporated and existing under the laws of British Columbia, has the power and authority to enter into this Contract and to carry out the transactions contemplated hereby, all of which have been duly and validly authorized by all requisite proceedings;

(b) neither the execution of this Contract nor the performance by the Purchaser of its obligations hereunder will result in a breach by the Purchaser of any term or proviso or constitute a default under any deed of trust or any other agreement to which it is bound; and

(c) the Purchaser is not a non-Canadian within the meaning of the ***Investment Canada Act***, R.S.C., 1985, c. 28.

4.2 The Purchaser covenants with the City that the Purchaser will pay 50% of the Project DCC Works up to a maximum of Ten Million (\$10,000,000.00) Dollars as follows:

(a) 50% of all of the design costs for the Project DCC Works within twenty (20) days of receipt of invoices on the design work issued to the Purchaser; and

(b) for all other Project DCC Works a letter of credit prior to the tender being issued and either reducing the letter of credit pursuant to Section 6.6 or cash for each progress payment within 5 days of the City providing a copy of the progress payment to the Purchaser.

ARTICLE 5 – CONDITIONS

5.1 The Purchaser acknowledges the receipt and sufficiency from the City of the sum of \$10.00 Dollars which will be non-refundable. In consideration for and despite anything set out in this Contract, the City's obligation to complete the transfer to the Purchaser of the City Land to be purchased by the Purchaser according to the terms and conditions of this Contract will be subject to the following conditions:

(a) the City, within twenty-one (21) days after the date of execution of this Contract, delivering notice to the Purchaser that the City Council, representing the City in its capacity as a municipality, has adopted a bylaw or passed a resolution, in its absolute discretion and as it considers necessary or appropriate, approving the disposition by the City of the City Land according to the terms and conditions of this Contract;

(b) the City Council on or before the Reference Date in its absolute discretion adopts a bylaw rezoning the City Land to a zone or zones acceptable to the City, provided that the City Land is to be rezoned as generally described in the sketch plan attached hereto as Schedule "F" (the "Rezoning Plan");

(c) the City Council on or before the Reference Date obtains the certificate of compliance described in Section 3.3 (a);

(d) the City Council on or before the Reference Date in its absolute discretion adopts a bylaw or resolution modifying the existing local area plan for the Campbell Heights Area to provide that the City Land may be rezoned as described in the Rezoning Plan; and

(e) the City and the Purchaser on or before the Reference Date agreeing to the Project DCC Works and the DCC Works Phasing Schedule.

5.2 The City Conditions are for the sole and exclusive benefit of the City.

Despite anything set out in this Contract, if:

- (a) the City does not deliver to the Purchaser notice referred to in Section 5.1 within the stipulated time limit; or
- (b) the City delivers to the Purchaser any notice referred to in Section 5.1 within the stipulated time limit, but the notice confirms to the Purchaser that the applicable condition has not been satisfied and the City has not waived it,

then this Contract will be void and neither the City nor the Purchaser will have any further obligation to the other under this Contract.

5.3 The City acknowledges the receipt and sufficiency from the Purchaser of the sum of Ten (\$10.00) Dollars which will be non-refundable. In consideration for and despite anything set out in this Contract, the Purchaser's obligation to contribute to the payment of the DCC Works pursuant to the terms and conditions of this Contract, will be subject to the following conditions:

- (a) the City satisfying the conditions set out in Section 5.1 within the dates specified therein;
- (b) the City obtaining the certificate of compliance described in Section 3.3(a) on or before the Reference Date;
- (c) the City modifying the existing local area plan for the Campbell Heights Area on or before the Reference Date to provide that the City Land may be rezoned as described in the Rezoning Plan;
- (d) the City having full, final and unappealable approval of the zoning for the City Land in a manner acceptable to the Purchaser on or before the Reference Date provided that the City Land is to be rezoned as described in the Rezoning Plan;
- (e) the City and the Purchaser agreeing to the terms and conditions of the Project DCC Works and DCC Works Phasing Schedule on or before the Reference Date; and
- (f) the Purchaser entering into purchase contracts on the terms and conditions acceptable to the Purchaser in its sole discretion for the sale of at least sixty (60) acres to third parties on or before the Reference Date.

To the extent either the Purchaser or the City has contributed to the payment of DCC Works or design costs, those amounts shall be non-refundable to such party and without recourse to the other party in the event the Purchaser's Conditions have not been satisfied or waived within the stipulated time limits in accordance with Section 5.4.

5.4 The Purchaser's Conditions are for the sole and exclusive benefit of the Purchaser. Despite anything set out in this Contract, if the Purchaser does not deliver to the City notice that the Purchaser's Conditions have been satisfied or waived within the stipulated time limits, then this Contract will be void and neither the City nor the Purchaser will have any further obligations to the other under this Contract, provided that if any of the conditions set out in Sections 5.3(b), (c), (d), (e) and (f) have not been satisfied on or before the Reference Date, the Purchaser shall have the option to extend such date for up to three (3) one (1) month periods, by notice in writing to the City on or before such date or the latest extension of such date, as the case may be.

ARTICLE 6 – PROJECT DCC WORKS AND DCC WORKS

6.1 In connection with each Phase, the Purchaser, in a timely manner, will execute and deliver to the City a Service Agreement.

6.2 In connection with the provision of the Project DCC Works for each Phase provided that the Purchaser has paid its 50% of the same, the City

will:

- (a) construct and Complete the Project DCC Works, or cause them to be constructed and Completed, diligently, in a good and workmanlike manner, according to accepted construction industry standards, and according to the lawful requirements of Government Bodies;
- (b) if any person commences proceedings to enjoin or otherwise prevent or declare unlawful construction of the Project DCC Works, use all reasonable commercial efforts to contest such proceedings, if there is an adverse ruling or decision, pursue all appeals if, in the City's reasonable opinion, such appeals are meritorious, including resisting the entry or seeking the stay of any temporary or permanent injunction that may be entered, and use all reasonable commercial efforts to bring about a favourable and speedy disposition of all such proceedings;
- (c) if any claim of builder's lien is filed against any lot comprising the City Land of any Phase, promptly cause its discharge from title by payment of the claim or by payment into court of any amount in dispute, together with such costs as the court may direct or to which the lien claimant may agree, and, in the case of a dispute, contest the claim with due diligence;
- (d) maintain the Project DCC Works according to the City standards; and
- (e) take all steps necessary to obtain any approval for the Completion of the Project DCC Works or certificate of acceptance as the City may issue.

6.3 Prior to the Reference Date (as such date may be extended pursuant to the terms of this Contract), the City and the Purchaser, acting reasonably, shall mutually agree on the DCC Works Phasing Schedule, the list of Project DCC Works to be funded by the City Development Cost Charge Bylaw, together with a budget and scheduled timing which will be required to be constructed with each Phase of the City Land.

6.4 The City and the Purchaser will mutually agree upon the consultants and the terms of each consulting agreement relating to such work acting reasonably and provided that the City gives instructions to the consultants in order to avoid inconsistent instructions that have not been budgeted for. The Purchaser will be entitled to Development Cost Charges credits for the costs of the engineering design as determined by the City, in accordance with the City's normal practices.

6.5 Any payment made by the Purchaser in respect of the DCC Works and the engineering-related design costs will be credited to any Development Cost Charges payable by the Purchaser for the Developable Acres purchased by the Purchaser in accordance with the City Development Cost Charge Bylaw.

6.6 Prior to the City issuing a tender for each contract for the construction of any portion of the Project DCC Works, the Purchaser shall, without duplication to the Letter of Credit described in Section 2.6, provide a letter of credit to the City for the Purchaser's 50% share of the estimated cost of the construction of the portion of the Project DCC Works covered by such contract. The said letter of credit for each contract will be reduced or released to the Purchaser in direct proportion to the progress payments that the Purchaser makes on such contract.

6.7 The City Development Cost Charge Bylaw during the term of this Contract will be a single fund for all DCC Works and will not be segmented into different utility funds or other equivalent model.

6.8 The purchase by the Purchaser of any of the City Land and land within the Campbell Heights Area that is outside the City Land which exceeds the land area that is covered by the full credit of the Purchaser's contribution to the DCC Works will be subject to the Purchaser paying in accordance with the City's usual and normal guidelines and rules at the prevailing Development Cost Charges rate for such additional lands prior to the issuance of a building permit in respect of same in accordance with the City Development Cost Charge Bylaw.

ARTICLE 7 – DCC WORKS PHASING

7.1 The timing of the construction of the DCC Works shall give priority to the City Land, particularly in the first four (4) years from the date which is the earlier of July 1, 2008 or the date on which sanitary sewer and water connections to the City's utility system are available, or could be installed or made available to any of the City Land. In any case such prioritization will be undertaken in a manner that will not cause a material increase in the Development Cost Charges for the Campbell Heights Area at full build out.

7.2 At the end of five (5) years following the date on which sanitary sewer and water connections to the City's utility system are available, or could be installed or made available to any of the City Land and every two (2) years thereafter during the Term, the City may review the amount of the City Land which is built upon, its utilization and the value of improvements constructed. Such review will:

- (a) be conducted in consultation with the Purchaser;
- (b) be based upon the take down rate of the land as set out in Section 2.1 or as amended in Section 2.3;
- (c) and in consideration of other development occurring in the area;
- (d) allow for the normal land utilization rate of similarly zoned and located parcels; and
- (e) allow for the normal delays for construction and the normal phasing and expansion of industrial and business park land users.

7.3 Subject to satisfying any requirements of the *Local Government Act* and any applicable municipal law, the parties covenant and agree as follows:

(a) the City may adopt rezoning by laws, approve subdivisions, issue development variance permits, development permits and building permits, or such other approvals allowing development on land within the Campbell Heights Area for agricultural uses or existing legal or illegal non conforming uses, provided that such development does not connect to the Project DCC Works within the first four (4) years from the earlier of July 1, 2008 or the date on which sewer and water connections are available to the City's utility system, or could be installed or made available to any of the City Land (the "Four Year Period") and then the restrictions in Section 7.3(b) and the deferral rights granted to the Purchaser in Section 2.3 will not apply;

(b) the City may accept and process applications on land within the Campbell Heights Area that would connect to the Project DCC Works provided that for these applicants the rezoning by-law will not be given 4th reading, the subdivision plan will not be executed by the Approving Officer, a development variance permit, development permit and building permit will not be issued, or such other approvals that would be required in advance of using the lands for commercial, industrial or business development, will not be granted during the first four (4) years from the earlier of July 1, 2008 or the date on which sanitary sewer and water connections to the City's utility system are available, or could be installed or made available to any of the City Land (the "Four Year Period");

(c) notwithstanding Section 7.3(a), the City may adopt rezoning by-laws, approve subdivisions, issue development variance permits, development permits and building permits, or such other approvals for applications for 3072 - 192nd Street, Surrey, British Columbia;

(d) notwithstanding Section 7.3(a), where an owner of a parcel of land with an area greater than twenty-five (25) acres within the Campbell Heights Area applies to the City to construct buildings, accessory buildings or structures with a floor area ratio as defined in Surrey Zoning Bylaw, 1993, No. 12000, as amended, of 0.23 or greater on the parcel of land, then the restrictions in Section 7.3(b) and the deferral rights granted to the Purchaser in Section 2.3 will not apply; and

(e) notwithstanding section 7.3(a), if an owner of a parcel of land with an area between fifteen (15) and twenty-five (25) acres within the Campbell Heights Area (other than servicing land for resale) applies to the City to construct, buildings, accessories buildings or structures and the Purchaser is not willing to provide a site for the proposed use in the City Land, then the restrictions in Section 7.3(a) and the deferral rights granted to the Purchaser in Section 2.3 will not apply.

7.4 Subject to satisfying any applicable legislation and following the expiry of the Four Year Period, the Development Cost Charges paid on behalf of any lands in the Campbell Heights Area will be distributed in the following order:

(a) the City will provide a Development Cost Charges rebate or credit against any Development Cost Charges payable to any developer (including the Purchaser) who is required by the City to install DCC Works, such rebate or credit to be applied in the year the said works would have been scheduled to be built in accordance with the DCC Works Phasing Schedule;

(b) at the City's discretion, up to 50% of the balance of the Development Cost Charges remaining after Section 7.4(a) above has been satisfied will be used by the City to repay the amount which the City invested in respect of the development of the Campbell Heights Area pursuant to the terms of this Contract; and

(c) the Development Cost Charges paid by persons other than the Purchaser remaining after Section 7.4(a) and Section 7.4(b) have been satisfied will be used to fund DCC Works that are to be constructed in accordance with the DCC Works Phasing Schedule of projects referred to in Section 7.4(a) above.

ARTICLE 8– FORMATION AND ENFORCEABILITY OF CONTRACT

8.1 The City's Conditions and the Purchaser's Conditions are not to be or be deemed to be conditions precedent to the formation of this Contract or its execution and delivery by each party to the other, and this Contract will be and is deemed to be enforceable from the time of such execution and delivery.

ARTICLE 9 – PERMITTED CITY CHARGES

9.1 From and after a Closing Date, the Purchaser agrees to be bound by and to comply with the requirements of the Permitted City Charges, applicable to the purchased Developable Acres.

9.2 From and after a Closing Date, in consideration of the sum of Ten (\$10.00) Dollars now paid by the City to the Purchaser and other good and valuable consideration, the receipt and sufficiency of which the Purchaser acknowledges, the Purchaser, releases, indemnifies and saves harmless the City, its elected and appointed officials and its employees and agents from

and against all liabilities, suits, actions, causes of action, obligations, statutory or other proceedings, judgments, injunctions, arbitrations, investigations, demands, claims, losses, loss of profits, damages, consequential damages, remediation costs, remediation cost recovery claims, fines, penalties, costs and expenses, including legal costs on a solicitor-client basis, causes, commenced, instituted, or claimed by any Government Body or any other person, firm, or corporation, and in connection with or arising out of its assumed obligations under any obligations of the City under the Permitted City Charges applicable to the purchased Developable Acres.

ARTICLE 10 – PURCHASER'S ENVIRONMENTAL INDEMNITY

10.1 In consideration of the sum of Ten (\$10.00) Dollars now paid by the City to the Purchaser and other good and valuable consideration, the receipt and sufficiency of which the Purchaser acknowledges, with respect to each Phase, the Purchaser, from and after the Closing Date in respect of such Phase, subject to the parties complying with Sections 3.3(a) and 10.2 and save and except for any contaminants introduced to or emitted on the City Lands by the City or those with whom or for whom the City has contractual obligations or relations, will indemnify and save harmless the City, its elected and appointed officials and its employees and agents from and against all liabilities, suits, actions, causes of action, obligations, statutory or other proceedings, judgments, injunctions, arbitrations, investigations, demands, claims, losses, damages, consequential damages, remediation costs, remediation cost recovery claims, fines, penalties, costs and expenses, including legal costs on a solicitor-client basis, caused, commenced, instituted, or claimed by any Government Body or any other person, firm, or corporation, and in connection with or arising out of:

(a) non-compliance of the Developable Acres comprising such Phase, or the Environment forming part of or surrounding it, with Environmental Laws caused by the negligent or deliberate acts of the Purchaser; and

(b) the release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, dumping, disposition, escaping, leaching, or migration of Contaminants, or any allegation with regard thereto, from the City Land, or the Environment forming part of or surrounding it caused by the negligent or deliberate acts of the Purchaser.

10.2 It is acknowledged and agreed that except as provided in this Agreement the Purchaser is acquiring the City Land “as is, where is”.

ARTICLE 11 – INSPECTION

11.1 The Purchaser, upon reasonable notice to the City, may enter upon the City Land prior to any Closing Date to inspect it, to conduct environmental tests regarding compliance with Environmental Laws and to install signage

and other facilities for the purposes of marketing, but in doing so will restore the land it disturbs and will be liable to the City for any damage it causes to persons, buildings, structures or properties as a result of such inspection, testing or marketing.

ARTICLE 12 – RISK

12.1 Each and every Acre of the City Land will be at risk of the City from the Reference Date to the date and time of submission to the Land Title Office of the Transfer relating to such Acre. After that date and time, such Acre will be at the risk of the Purchaser.

ARTICLE 13 – ADJUSTMENTS

13.1 The City and Purchaser will adjust the property value taxes and other items customarily the subject of adjustment in a land transaction from and including the Closing Date. The City may adjust for any goods and services tax for which the Purchaser is responsible and pay it to the appropriate Government Body.

ARTICLE 14 – POSSESSION

14.1 The Purchaser will have the right to possession of each Acre of the City Land on the Closing Date in respect of such Developable Acres, subject to the Permitted City Charges.

ARTICLE 15 – CLOSING

15.1 At least seven (7) days prior to each Closing Date, the Purchaser's lawyer will prepare and deliver to the City the following closing documents all in a form to be acceptable to the City's Lawyer:

- (a) the Transfer for the Phase;
- (b) property transfer tax returns, if any;
- (c) statements of adjustments; and
- (d) Land Title Office applications and other instruments and plans necessary to carry out the transactions contemplated by this Contract.

ARTICLE 16 – REGISTRATION AND PAYMENT

16.1 The Purchaser will have the Purchaser's Lawyer carry out the following closing procedures and undertake to the City Lawyer:

- (a) not to deal with the documents referred to in the previous Section except in accordance with this Section and only if the Purchase Price is in trust with the Purchaser's Lawyer;
- (b) on the Closing Date, to conduct a pre-registration index search of the City Land being transferred;
- (c) if the pre-registration index search indicates that the title is or will be free and clear from liens, charges, and encumbrances except for the Permitted City Charges, and any liens, charges, or encumbrances in respect of which signed discharges (if any) are in hand or in respect of which the City Lawyer has given the Purchaser's Lawyer an undertaking under Section 15, to submit the Transfer for registration at the Land Title Office;
- (d) to conduct a post-registration index search of the City Land transferred upon posting by the Land Title Office of the registration numbers;
- (e) if the post-registration index search indicates that, upon completion of the registration process, the Land Title Office will issue a determinable fee simple title for the City Land transferred naming the Purchaser as registered owner and free and clear from liens, charges and encumbrances except for Permitted City Charges, to pay the adjusted Purchase Price to the City Lawyer promptly after receipt of that search; or
- (f) if the Purchaser's Lawyer is unable to comply with those undertakings, to return the Transfer to the City Lawyer, or if the Transfer has been submitted for registration, to apply immediately to withdraw it and to return it promptly after receipt from the Land Title Office.

ARTICLE 17 – FURTHER UNDERTAKINGS AND ASSURANCES

17.1 The City Lawyer and Purchaser's Lawyer may exchange such further or amended undertakings as are customary among reputable solicitors having experience in such transactions, including an undertaking concerning the discharge of any liens, charges or encumbrances from the City Lawyer that is reasonably satisfactory to the Purchaser's Lawyer.

17.2 Each of the City and Purchaser will give to the other such further assurances, deliver such further documents and do such further things as are reasonably necessary to carry out the transactions contemplated by this Contract.

ARTICLE 18 – ASSIGNMENT

18.1 The parties agree that the rights and obligations of the Purchaser under this Contract may not be assigned by the Purchaser without the consent of the City which may be arbitrarily withheld except for the assignment to Campbell Heights Developments Ltd. in the form of assignment agreement attached as Schedule "E" provided that the Purchaser herein shall not be released or discharged of any of the obligations under this Contract upon such assignment until the Purchaser has made the payments described in Section 4.2 in full.

ARTICLE 19 – DISCRETION

19.1 The City by executing and delivering this Contract does not intend to fetter, and will not be deemed to have fettered, the discretion of the City Council to approve or not approve the modification of the Local Area Plan, the rezoning of the City Land or the Approving Officer to approve or not approve the Subdivision Plan and the Official Community Plan amendment or anything else required by the *Local Government Act* for compliance with Section 7.3 herein.

ARTICLE 20 – FEES AND CHARGES

20.1 The Purchaser is responsible for all fees and charges that are normally applicable to subdivision of lands and construction of buildings or structures thereon, including but not limited to application fees, engineering processing fees, administration fees and charges, and a portion of the Development Cost Charges pursuant to the City Development Cost Charge Bylaw as provided for in this Contract.

ARTICLE 21 – GENERAL

21.1 The parties agree that time shall be of the essence hereof.

21.2 This Contract shall enure to the benefit of and be binding upon the parties hereto, their respective heirs, executors, administrators, successors and assigns.

21.3 Any notice required to be given hereunder by any party shall be deemed to have been well and sufficiently given if mailed by prepaid registered mail, sent by facsimile transmission to, or delivered at, the address of the other party hereinafter set out:

(a) To the City:

CITY OF SURREY
14245 - 56th Avenue
Surrey, British Columbia
V3X 3A2
Attention: City Manager
Facsimile: (604) 591-4357

with a copy to the same address to the attention of the City Lawyer:

Facsimile: (604) 599-1613

(b) To the Purchaser:

KINGSWOOD CAPITAL CORPORATION
#520 – 701 West Georgia Street
Vancouver, British Columbia
V7Y 1A1
Attention: Joe Segal
Facsimile: (604) 687-6539

PROGRESSIVE CONSTRUCTION LTD.
5591 No. 3 Road
Richmond, British Columbia
V6X 2C7
Attention: Ron Marr
Facsimile: (604) 270-8238

with a copy to:

CAMPBELL HEIGHTS DEVELOPMENTS LTD.
c/o #520 – 701 West Georgia Street
Vancouver, British Columbia
V7Y 1A1
Attention: Joe Segal
Facsimile: (604) 687-6539

with a copy to:

EMERSON REAL ESTATE GROUP
#1180 – 625 Howe Street
Vancouver, British Columbia
V6C 2T6
Attention: Ron Emerson
Facsimile: (604) 688-7002

and a copy to:

KOFFMAN KALEF
19th Floor - 885 West Georgia Street
Vancouver, British Columbia
V6C 3H4
Attention: Patrick J. Julian
Facsimile: (604) 891-3788

21.4 In the event that any dispute arises as to the interpretation of this Contract, or as to the responsibilities of the parties hereto, then the same shall be referred to the decision of a sole arbitrator appointed pursuant to the provisions of the *Commercial Arbitration Act*, R.S.B.C. 1996, c. 55, as amended.

21.5 If any provision of this Contract is unenforceable or invalid for any reason whatsoever, such unenforceability or invalidity shall not affect the enforceability or validity of the remaining provisions of this Contract and such provisions shall be severable from the remainder of this Contract.

21.6 The provisions herein constitute the entire Contract between the parties hereto and supersede all previous expectations, understandings, communications, representations and agreements, whether verbal or written, between the parties with respect to the subject matter herein.

21.7 The parties hereto expressly acknowledge and agree that the rights

and obligations of the Purchaser under this Contract may not be assigned by them without the consent of the City.

21.8 No amendment to this Contract will have any effect unless it is in writing and executed by the parties.

21.9 In addition to their rights under this Contract and at law, the City, and the Purchaser will be entitled to all equitable remedies available to enforce their rights including specific performance, injunction and declaratory relief.

21.10 Any reference to a statute is to the statute and its regulations in force on the Reference Date and to subsequent amendments or replacements of the statutes or regulations.

21.11 Nothing expressly set out or implied by this Contract will prejudice, abrogate or effect the rights and powers of the City in the exercise of its function under any public or private statute, bylaw, order or regulation, all of which may be fully and effectively exercised as if the City and the Purchaser had not executed and delivered this Contract to the other.

21.12 The fact that a party waives any default hereunder is not to be construed to mean that such party waives any other default.

21.13 Each of the parties will pay its own legal fees. The Purchaser shall pay all registration fees and property purchase tax payable in connection with the registration of each Transfer pursuant to the *Property Transfer Tax Act*.

21.14 Each of the parties shall execute and deliver all such further documents and do such further acts and things as may be reasonably required from time to time to give effect to this Contract.

21.15 The City shall have no obligation to pay any real estate commission in connection with the purchase and sale transaction contemplated by this Contract.

21.16 There are no representations, warranties, guarantees, promises or agreements other than those contained herein all of which shall survive the completion of the sale and purchase of the City Land and shall not merge therewith.

21.17 The Purchaser shall ensure that all work is performed or carried out in conformance with all applicable laws, statutes, ordinances, regulations and bylaws of any federal, provincial or municipal authority and with any lawful direction of any public officer.

21.18 This Contract shall not be construed as in any way establishing a partnership, joint venture, expressed or implied agency or employer or employee relationship between the parties and nothing contained in this

Contract shall confer on either party any authority to bind the other party in any manner whatsoever and none of the parties shall represent itself as being able to do so.

21.19 That this Contract shall be governed by and construed according to the laws of the Province of British Columbia.

21.20 Should delay be occasioned by only a state of war or apprehended war or civil insurrection, fire or Act of God, strike or any other matter beyond the control of the City or the Purchaser, the time periods set out in this Contract shall be extended for the period of such delay.

21.21 This Contract may be executed in any number of original counterparts or by facsimile transmission, with the same effect as if all the parties had signed the same document and will become effective when one or more counterparts or facsimile copies have been signed by all of the parties and delivered to each of the other parties. All counterparts or facsimile copies will be construed together and evidence only one agreement, which, notwithstanding the dates of execution of any counterparts or facsimile copies, will be deemed to be the Reference Date and only one of which need to be produced for any purpose.

ARTICLE 22 – INTERPRETATION

22.1 The following provisions will apply to this Contract:

- (a) Sections and headings are for convenient reference and are not to affect the meanings of any provisions;
- (b) use of the singular or masculine includes the plural, feminine, or body corporate and vice versa;
- (c) when the word “including” or a similar word is used, the words “without limitation” are deemed to follow it;
- (d) any reference to money is to Canadian currency;
- (e) all calculations are to be made according to Canadian generally accepted accounting principles consistently applied;
- (f) in all cases, the language in this Contract is to be interpreted simply, according to its fair meaning and not strictly for or against any party; and
- (g) if the date for Completion of any matter is not a date on which the Land Title Office is open for business, then the date will be the next day that the Land Title Office is open for business.

IN WITNESS WHEREOF the parties have executed this Contract as of the day and year first above written.

CITY OF SURREY

by its authorized signatories

Doug McCallum
Mayor

Margaret Jones
City Clerk

KINGSWOOD CAPITAL CORPORATION

by its authorized signatory

Joseph Segal
President

PROGRESSIVE CONSTRUCTION LTD.

by its authorized signatory

Milan Ilich
President

SCHEDULE “B”(1) - CAMPBELL HEIGHTS AREA



SCHEDULE “B”(2) - CAMPBELL HEIGHTS AREA



SCHEDULE “B”(3) - CAMPBELL HEIGHTS AREA



SCHEDULE “B”(4) - CAMPBELL HEIGHTS AREA



SCHEDULE “B”(5) - CAMPBELL HEIGHTS AREA



SCHEDULE “B”(6) - CAMPBELL HEIGHTS AREA



SCHEDULE “B”(7) - CAMPBELL HEIGHTS AREA



SCHEDULE "C"

OPTION TO PURCHASE

LAND TITLE ACT

**FORM C
(SECTION 233)
PROVINCE OF BRITISH COLUMBIA**

1. **APPLICATION:** (Name, address, phone number and signature of applicant, applicant's solicitor or agent)
- KOFFMAN KALEF, Business Lawyers, 19th Floor, 885 West Georgia Street, Vancouver, British Columbia, V6C 3H4,
Tel: (604) 891-3688 (File #39485-40)

PATRICK J. JULIAN, Applicant's Agent

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF THE LAND: *

(PID)(Legal Description)

SEE SCHEDULE

3. NATURE OF INTEREST: *

DESCRIPTIONDOCUMENT REFERENCE PERSON ENTITLED TO INTEREST
(page and paragraph)

Option to PurchaseEntire InstrumentTransferee

4. TERMS:

Part 2 of this instrument consist of (select one only):

(a) Filed Standard Charge Terms

(b) Express Charge Terms

(c) Release

X

D.F. Number:

Annexed as Part 2

There is no Part 2 of this instrument

A selection of (a) includes any additional or modified terms referred to in item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in item 3 is released or discharged as a charge on the land described in item 2.

5. TRANSFEROR(S): *

CITY OF SURREY (formerly the Corporation of the District of Surrey)

6. TRANSFEREE(S): (including postal address(es) and postal code(s)) *

CAMPBELL HEIGHTS DEVELOPMENTS LTD., 1900 – 885 West Georgia Street, Vancouver, British Columbia, V6C 3H4

GENERAL INSTRUMENT – PART 1

Page 2

7. ADDITIONAL OR MODIFIED TERMS:

N/A

8. EXECUTION(S): ** This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)
(Must be executed in black ink)

Name:

Address:

(as to both signatures)

Name:

Address:

Execution Date

Y

M

D

Party(ies) Signature(s)
(Must be executed in black ink)

CITY OF SURREY

by its authorized signatory(ies):

Mayor:

Clerk:

CAMPBELL HEIGHTS DEVELOPMENTS LTD.

by its authorized signatory(ies):

Name:

Name:

file:///C:/Users/GB3/Desktop/bylaw%20project/All%20HTML%20Files/7739.html[05/06/2015 3:43:26 PM]

(as to both signatures)

03		
03		

OFFICER CERTIFICATION:
Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.
* If space insufficient, enter “SEE SCHEDULE” and attach schedule in Form E.
** If space insufficient, continue executions on additional page(s) in Form D.

LAND TITLE ACT
FORM E

SCHEDULE Page 3

Enter the required information in the same order as the information must appear on the Freehold Transfer Form, Mortgage Form or General Document Form.

3. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF THE LAND:	
(PID)	(Legal Description)
015-384-705	South-east Quarter of the North-east Quarter Section 16, Township 7, New Westminster District;
013-239-058	West half of the North-east Quarter of the North-east Quarter, Section 16, Township 7, New Westminster District;
013-239-023	East half of the North-east Quarter of the North-east Quarter Section 16, Township 7, New Westminster District;
002-898-667	West half of the North-west Quarter Section 15, Township 7, New Westminster District;
012-390-569	South half of Lot 1, Section 22, Township 7, New Westminster District, Plan 1834;
017-900-352	Lot A (BF51754), Section 22, Township 7, New Westminster District, Plan 1834; and
013-243-888	East half of the South-east Quarter Section 21, Township 7, New Westminster District.

PART 2 - TERMS OF INSTRUMENT

OPTION TO PURCHASE

THIS AGREEMENT made as of July _____, 2003.

BETWEEN:

CITY OF SURREY, having an office at 14245 – 56th Avenue, Surrey, British Columbia, V3X 3A2

(the “Vendor”)

AND:

CAMPBELL HEIGHTS DEVELOPMENTS LTD., a British Columbia company with its registered office at
1900 – 885 West Georgia Street, Vancouver, British Columbia, V6C 3H4

(the “Purchaser”)

WHEREAS:

- A. The Vendor is the registered and beneficial owner of certain lands and premises (the “Property”) described in Appendix 1 hereto; and
- B. The Vendor has agreed to grant the Purchaser an option to purchase the Property in accordance with the terms of this Agreement.

WITNESSETH THAT in consideration of the Option Payment now paid by the Purchaser to the Vendor and other good and valuable consideration, the receipt and sufficiency thereof is hereby acknowledged by the Vendor, the parties agree as follows:

ARTICLE 1 - GRANT AND EXERCISE OF OPTION

1.1 Option

In consideration of the sum of \$10.00 and other good and valuable consideration (the “Option Payment”) now paid by the Purchaser to the Vendor, the receipt of which is hereby acknowledged by the Vendor, the Vendor hereby grants to the Purchaser the sole and exclusive option (the “Option”), irrevocable within the time for exercise by the Purchaser herein limited, to purchase from time to time until the expiration of the Option Period pursuant to the terms and conditions of this Agreement or any other agreement between the Vendor and the Purchaser those portions of the Property as determined by the Purchaser in writing to the Vendor delivered with the notice described in section 1.3.

1.2 Purchase Price

The purchase price for the Property will be the greater of \$10.00 and the price described in any other agreement between the Vendor and Purchaser, subject to adjustments in accordance with section 2.4.

1.3 Exercise of Option

The Option may be exercised in whole or in part by the Purchaser at any time or times between 12:01 a.m. on October 31, 2003 and 11:59 p.m. on September 30, 2015, as extended by the parties pursuant to this Agreement or any other agreement between the Vendor and the Purchaser (the “Option Period”) by the Purchaser giving to the Vendor written notice of the exercise of the Option. If the Purchaser exercises the Option, the Purchaser will purchase the Property as follows:

- (a) within the first (1st) year of the Option Period, the Purchaser will be required to purchase a minimum of twelve (12) acres;
- (b) within the second (2nd) and third (3rd) years of the Option Period, the Purchaser will be required to purchase of a minimum of fifteen (15) acres per year; and
- (c) from the fourth to the last year of the Option Period, the Purchaser will be required to purchase of a minimum of seventeen (17) acres per year.

At the Purchaser's option, the Purchaser's minimum purchase of the Property during any year specified in (a), (b) or (c) above may be reduced or deferred by that number of acres being developed by competing developers within the Campbell Heights Area, subject to the conditions contained herein or in any other agreement between the Vendor and the Purchaser.

1.4 Non-exercise of Option

If the Option is not exercised within the time and in the manner herein set forth or in any other agreements between the Vendor and the Purchaser, the Option and this Agreement and everything contained herein will be null and void and no longer binding upon the parties hereto and the Option Payment will be absolutely forfeited to the Vendor.

ARTICLE 2 – COMPLETION

2.1 Closing Date

Subject to the requirement that the Purchaser comply with the purchase schedule set out in section 1.3 above (as extended by this Agreement or any other agreement between the Vendor and the Purchaser), each closing date (the “Closing Date”) for the purchase by the Purchaser of one or more acres of the Property shall be determined by the Purchaser in its sole discretion; provided, however, that each Closing Date shall occur no later than thirty (30) days following the date of delivery of each notice in writing by the Purchaser to the Vendor indicating that it will be in a position to register the Transfer in respect of any one or more acres of the Property being acquired by the Purchaser or, if the appropriate Land Title Office is closed on such day, then the next following day upon which it is open, provided that the last date for any such registration shall be no later than September 30, 2015 or such other day as may be mutually agreed between the parties.

2.2 Closing Documents

The Purchaser will cause the Purchaser’s solicitors to prepare and deliver to the Vendor or its solicitors at least seven (7) days prior to the Closing Date, the following closing documents:

- (a) a Freehold Transfer (**Land Title Act** - Form A) (the “Transfer”) for each portion of the Property being acquired by the Purchaser;
- (b) property tax returns, if any;
- (c) statement of adjustments; and
- (d) Land Title Office applications and other instruments and plans necessary to carry out the transactions contemplated by this Agreement or any other agreement between the Vendor and the Purchaser.

2.3 Possession

The Purchaser will have the right to vacant possession of each acre of the Property on the Closing Date relating thereto, free from all tenancies, liens, claims, charges and encumbrances other than the permitted encumbrances listed in Appendix 1 (the “Permitted City Charges”).

2.4 Adjustments

The Vendor and the Purchaser will adjust the property taxes and other items customarily the subject of adjustment in a land transaction in the City of Surrey from and including each Closing Date. The Vendor may adjust for any goods and services taxes for which the Purchaser is responsible and pay it to the appropriate government body.

2.5 Risk

Each and every acre (or part thereof) of the Property will be at the risk of the Vendor until the date and time of submission to the Land Title Office of the Transfer relating to such acre or acres. After that date, such acre or acres (or part thereof) of the Property will be at the risk of the Purchaser.

ARTICLE 3 - CLOSING PROCEDURE

3.1 Closing Procedure

The Purchaser will have the Purchaser's solicitors carry out the following closing procedures, and undertake to the Vendor's solicitors:

- (a) not to deal with the documents referred to in the previous section except in accordance with this section and only if the purchase price is in trust with the Purchaser's solicitors;
- (b) on each Closing Date, to conduct a pre-registration index search of the Property being transferred;
- (c) if the pre-registration index search indicates that the title is or will be free and clear from liens, charges, and encumbrances, except for the Permitted City Charges, and any liens, charges, or encumbrances in respect of which signed discharges (if any) are in hand or in respect of which the Vendor's solicitors have given the Purchaser's solicitors, an undertaking to submit the Transfer for registration at the Land Title Office;
- (d) to conduct a post-registration index search of the Property transferred upon posting by the Land Title Office of the registration numbers;
- (e) if the post-registration index search indicates that, upon completion of the registration process, the Land Title Office will issue a determinable fee simple title for the Property transferred naming the Purchaser as registered owner and free and clear from liens, charges and encumbrances except for Permitted City Charges, to pay the adjusted purchase price to the Vendor's solicitors promptly after receipt of that search; or
- (f) if the Purchaser's solicitors is unable to comply with those undertakings, to return the Transfer to the Vendor's solicitors, or if the Transfer has been submitted for registration, to apply immediately to withdraw it and to return it promptly after receipt from the Land Title Office.

3.2 Further Undertakings

The Vendor's solicitors and the Purchaser's solicitors may exchange such further or amended undertakings as are customary among reputable solicitors having experience in such transactions including an undertaking concerning the discharge of any liens, charges or encumbrances from the Vendor's solicitors that is reasonably satisfactory to the Purchaser's solicitors.

3.3 Election

If on a Closing Date any of the representations or warranties made by the Vendor herein or in any other agreement between the Vendor and the Purchaser are untrue or the Vendor is in default under any of the covenants and agreements to be observed or performed by the Vendor under this Agreement or any other agreement between the Vendor and the Purchaser, the Purchaser may elect not to complete the purchase of the Property hereunder and be entitled to a return of the Option Payment forthwith or to complete the purchase of the Property hereunder, in either case without prejudice to any rights or remedies the Purchaser may have in respect of the Vendor's breach or default.

ARTICLE 4 - VENDOR'S REPRESENTATIONS AND WARRANTIES

4.1 Vendor's Representations and Warranties

The Vendor represents and warrants to the Purchaser as representations and warranties that are true at the date hereof and will be true at the time of completion and that are to continue and to survive the purchase of the Property by the Purchaser regardless of any independent investigations that the Purchaser may cause to be made, that, subject to the limitations, if any, expressed herein:

- (a) the Vendor will have good and marketable title to the Property on the Closing Date, free and clear of all liens, claims, charges, encumbrances and legal notations other than the Permitted City Charges;
- (b) the Vendor has full power, authority and capacity to enter into this Agreement and to carry out the transactions

contemplated herein;

(c) there is no action or proceeding pending or to the Vendor's knowledge threatened against the Vendor before any court, arbiter, arbitration panel or administrative tribunal or agency which, if decided adversely to the Vendor, might materially affect the Vendor's ability to perform the Vendor's obligations hereunder;

(d) as of each Closing Date, the representations and warranties of the Vendor set out in any other agreement between the Vendor and the Purchaser shall be true and correct.

4.2 Indemnity

The Vendor will indemnify the Purchaser against, and save it harmless from, any loss, cost or damage of any nature whatsoever sustained by the Purchaser directly or indirectly by reason of a breach, inaccuracy or incompleteness of any of the warranties or representations set forth in section 4.1. The Vendor acknowledges and agrees that the Purchaser has entered into this Agreement relying on such warranties and representations and the other warranties, representations, terms and conditions set out in any agreement between the Vendor and the Purchaser.

ARTICLE 5 - PURCHASER'S REPRESENTATIONS AND WARRANTIES

5.1 Purchaser's Representations and Warranties

The Purchaser hereby represents and warrants as representations and warranties that are true as of the date hereof and will be true as of the Closing Date as follows:

(a) the Purchaser is a corporation duly incorporated and existing under the laws of British Columbia and duly qualified to purchase and own the Property and the Purchaser has full power, authority and capacity to enter into this Agreement and carry out the transactions contemplated herein; and

(b) neither the Purchaser entering into this Agreement nor the performance of its terms will result in the breach of or constitute a default under any term or provision of any indenture, mortgage, deed of trust or other agreement to which the Purchaser is bound or subject.

ARTICLE 6 – INTERPRETATION

6.1 This Agreement

The phrase "this Agreement" means this agreement between the Vendor and the Purchaser, including the Schedules hereto.

6.2 Headings

The headings used in and the organization of this Agreement are solely for convenience of reference and will not in any way affect, limit, amplify or modify the terms hereof and will not be construed in any way to be part of this Agreement in the interpretation hereof.

6.3 Non-limiting

The word "including", when following any general statement, will be construed to refer to all other things that could reasonably fall within the scope of such general statement, whether or not non-limiting language (such as "without limitation") is used with reference thereto.

6.4 Gender and Number

Words importing the masculine gender include the feminine and neuter genders and words in the singular include the plural, and vice versa.

6.5 Governing Law

This Agreement and all matters arising hereunder will be governed by and construed in accordance with the laws of British Columbia, which will be deemed to be the proper law hereof, and the courts of British Columbia will have the non-exclusive jurisdiction to entertain and determine all claims and disputes arising out of or in any way connected with this Agreement and the validity, existence and enforceability hereof.

ARTICLE 7 – MISCELLANEOUS

7.1 Time

Time will be of the essence of this Agreement and will remain of the essence notwithstanding the extension of any of the dates hereunder.

7.2 No Waiver

No failure or delay on the part of either party in exercising any right, power or privilege under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege. Except as may be limited herein, either party may, in its sole discretion, exercise any and all rights, powers, remedies and recourses available to it under this Agreement or any other remedy available to it and such rights, powers, remedies and recourses may be exercised concurrently or individually without the necessity of making any election.

7.3 Tender

It is agreed that any tender of documents or money may be made upon the respective solicitors for the parties and that it will be sufficient to tender a solicitor's trust cheque rather than cash.

7.4 Legal Fees

Each party will pay its own legal fees. The Purchaser will be responsible for all registration fees and property purchase tax payable in connection with the registration of the Transfer.

7.5 Severability

If any provision of this Agreement or any part hereof is determined to be invalid it will be severable and severed from this Agreement and the remainder of this Agreement will be construed as if such invalid provision or part had been deleted from this Agreement.

7.6 Survival of Representations and Warranties

All representations, warranties, guarantees, promises and agreements made by the parties will survive the Closing Date and the transfer of the Property to the Purchaser.

7.7 Amendment

This Agreement may be altered or amended only by an Agreement in writing signed by the parties hereto.

7.8 Further Assurances

Each of the parties hereto will at all times and from time to time and upon reasonable request do, execute and deliver all further assurances, acts and documents for the purpose of evidencing and giving full force and effect to the covenants, agreements and provisions in this Agreement.

7.9 Notices

Any demand or notice which may be given pursuant to this Agreement will be in writing and delivered, telecopied or sent by postage prepaid mail and addressed to the parties as follows:

(a) To the Vendor:

CITY OF SURREY
14245 - 56th Avenue
Surrey, British Columbia
V3X 3A2
Attention: City Manager
Facsimile: 604-591-4357

with a copy to the same address to the attention of the Vendor's solicitors:

Facsimile: 604-599-1613

(b) To the Purchaser:

CAMPBELL HEIGHTS DEVELOPMENTS LTD.
c/o 520 – 701 West Georgia Street
Vancouver, British Columbia
V7Y 1A1
Attention: Joe Segal
Facsimile: 604-687-6539

with a copy to:

KINGSWOOD CAPITAL CORPORATION
520 – 701 West Georgia Street
Vancouver, British Columbia
V7Y 1A1
Attention: Joe Segal
Facsimile: 604-687-6539

with a copy to:

PROGRESSIVE CONSTRUCTION LTD.
5591 No. 3 Road
Richmond, British Columbia
V6X 2C7
Attention: Ron Marr
Facsimile: 604-270-8238

with a copy to:

EMERSON REAL ESTATE GROUP
1180 - 625 Howe Street
Vancouver, British Columbia
V6C 2T6
Attention: Ron Emerson
Facsimile: 604-688-7002

and a copy to:

KOFFMAN KALEF
19th Floor
885 West Georgia Street
Vancouver, British Columbia
V6C 3H4
Attention: Patrick J. Julian
Facsimile: 604-891-3788

or at such other address as either party may specify in writing to the other.

7.10 Binding Effect

This Agreement will enure to the benefit of and be binding upon the heirs, executors, administrators, legal representatives, successors and permitted assigns of the parties, as applicable.

7.11 No Merger

This Agreement shall not create any merger or alter or prejudice the rights of the Vendor or the Purchaser under any other agreement between the Vendor and the Purchaser relating to the Property and made prior to or subsequent to this Agreement, all of which rights are hereby reserved and shall survive the execution, delivery and registration of this Agreement.

7.12 Definitions

Any capitalized terms not defined in this Agreement shall have the respective meanings given in other agreements between the Vendor and the Purchaser relating to the Property.

7.13 Purpose of Option

The Vendor and the Purchaser hereby agree that this Agreement has been entered into solely for the purpose of registering a notice of the Purchaser's option to purchase against title to the Property. The existence or absence of any terms, obligations or conditions of this Agreement shall not detract from the parties' rights and obligations under any other agreements between the Vendor and the Purchaser relating to the Property. Furthermore, the Purchaser and the Vendor covenant and agree with each other that the terms and conditions contained in any other agreement between them concerning the Property and this Agreement are not superseded by and shall survive execution, delivery and registration of this Agreement. In the event of a contradiction between the terms of this Agreement and the terms of any other agreements between the Vendor and the Purchaser relating to the Property, the terms of the other agreements shall prevail.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement by executing the attached Form C.

APPENDIX 1

THE PROPERTY AND PERMITTED CITY CHARGES

A. The Property

The Property is the lands and premises (or portions thereof) comprising approximately 264.7 acres, currently legally described as:

- (a) Parcel Identifier: 015-384-705
the South-east Quarter of the North-east Quarter Section 16, Township 7,
New Westminster District;
- (b) Parcel Identifier: 013-239-058
West half of the North-east Quarter of the North-east Quarter
Section 16, Township 7, New Westminster District;
- (c) Parcel Identifier: 013-239-023
East half of the North-east Quarter of the North-east Quarter Section 16,
Township 7, New Westminster District;
- (d) Parcel Identifier: 002-898-667
West half of the North-west Quarter Section 15, Township 7,
New Westminster District;
- (e) Parcel Identifier: 012-390-569
South half of Lot 1, Section 22, Township 7, New Westminster District,
Plan 1834;
- (f) Parcel Identifier: 017-900-352
Lot A (BF51754), Section 22, Township 7, New Westminster District,
Plan 1834; and
- (g) Parcel Identifier: 013-243-888
East half of the South-east Quarter Section 21, Township 7,
New Westminster District,

all of which are outlined in heavy outline on the sketch attached hereto, EXCLUDING any acreage therein relating to fisheries setbacks, wildlife and trail corridors, parkland, rights of way and dedications for 28th Avenue, 24th Avenue, 20th Avenue and 192nd Street, Surrey, British Columbia.

B. Permitted City Charges

- 1. Parcel Identifier: 015-384-705
Statutory Right of Way R1778
- 2. Parcel Identifier: 013-239-058
Statutory Right of Way R1777
- 3. Parcel Identifier: 013-243-888
Statutory Right of Way BE268301

SCHEDULE “D”

PERMITTED CITY CHARGES

1. Parcel Identifier: 015-384-705

Statutory Right of Way R1778

2. Parcel Identifier: 013-239-058

Statutory Right of Way R1777

3. Parcel Identifier: 013-243-888

Statutory Right of Way BE268301

SCHEDULE “E”

ASSIGNMENT OF LAND AGREEMENT

This Agreement is dated for reference _____, 2003.

BETWEEN:

KINGSWOOD CAPITAL CORPORATION, a British Columbia company with an office at #520 – 701 West Georgia Street, Vancouver, British Columbia, V7Y 1A1

and

PROGRESSIVE CONSTRUCTION LTD., a British Columbia company with an office at 5591 No. 3 Road, Richmond, British Columbia, V6X 2C7

(collectively the “Assignor”)

AND:

1

(the “Assignee”)

AND:

CITY OF SURREY, having an office at 14245 – 56th Avenue, Surrey, British Columbia, V3X 3A2

(the “City”)

WHEREAS the Assignee is an approved assignee as referred to in the Land Agreement and the Assignor has agreed to assign to the Assignee all their rights and obligations under the Land Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the sum of \$1.00 and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), now paid by the City and the Assignee to the Assignor, the parties agree as follows:

ARTICLE 1 – INTERPRETATION

1.1 Definitions

In and for the purposes of this Agreement:

- (a) Capitalized terms used herein which are defined in the Land Agreement and not otherwise defined herein shall have the meanings assigned to such terms in the Land Agreement;
- (b) “Assumed Obligations” means all of the covenants, agreements and obligations of the Assignor under the Land Agreement to be observed or performed on or after the Effective Date;
- (c) “Effective Date” means _____;
- (d) “Land Agreement” means the agreement between the City of Surrey and the Assignor dated for reference _____, 2003 regarding the transfer and development of the City Land; and
- (e) “Prior Obligations” means all of the covenants, agreements and obligations of the Assignor under the Land Agreement to be observed or performed up to the Effective Date.

ARTICLE 2 - ASSIGNMENT

2.1 Assignment

The Assignor hereby assigns and transfers to the Assignee all of the Assignor's rights and obligations under the Land Agreement with full power and authority to exercise and enforce any right of the Assignor in respect thereof, and the City hereby consents to the assignment and transfer described in this Agreement.

ARTICLE 3 - REPRESENTATIONS AND WARRANTIES

3.1 The Assignor represents and warrants to the Assignee that:

- (a) it is not in default under any of their obligations contained in the Land Agreement and the Land Agreement has not been modified;
- (b) the Land Agreement has not been assigned by the Assignor;
- (c) the Assignor had sufficient power, authority and capacity to enter into the Land Agreement and to carry out their obligations thereunder, all of which were duly and validly authorized by all necessary proceedings; and
- (d) the Assignor has sufficient power, authority and capacity to enter into this Agreement and to carry out their obligations hereunder, all of which have been duly and validly authorized by all necessary proceedings.

3.2 The Assignee represents and warrants to the Assignor and to the City that the Assignee has sufficient power, authority and capacity to enter into this Agreement and to carry out its obligations hereunder, all of which have been duly and validly authorized by all necessary proceedings.

ARTICLE 4 - COVENANTS

4.1 Assignor's Covenants to the Assignee

The Assignor covenants and agree to observe and perform the Prior Obligations and agrees to indemnify and hold harmless the Assignee from and against any loss, cost, damage, claim, demand, action or cause of action, including all actual legal costs, on a solicitor and own client basis, in any way resulting from, connected with or arising out of any breach or non-observance by the Assignor of any Prior Obligation.

4.2 Assignee's Covenants to the Assignor

As of the Effective Date, the Assignee hereby assumes the Assumed Obligations, and covenants and agrees with the Assignor that from and including the Effective Date, the Assignee will observe and perform all of the Assumed Obligations, and will indemnify and hold harmless the Assignor from and against any loss, cost, damage, claim, demand, action or cause of action, including all actual legal costs, on a solicitor and own client basis, in any way resulting from, connected with or arising out of any breach or non-observance by the Assignee of any Assumed Obligations.

4.3 Assignor's Covenant to the City

The Assignor hereby covenants and agrees to indemnify and hold harmless the City from and against any loss, cost, damage, claim, demand, action or cause of action, including all actual legal costs, on a solicitor and own client basis, in any way resulting from, connected with or arising out of any breach or non-observance by the Assignee of any Assumed Obligations.

4.4 No Release of the Assignor

The City acknowledges and confirms that the Assignor is not released and discharged from any liability for the performance of their obligations under the Land Agreement until the Purchaser has made the payments described in Section 4.2 of the Land Agreement in full.

4.5 Co-operation

The parties will use all reasonable efforts to co-operate in respect of any matter in connection with the subject matter hereof.

ARTICLE 5 - GENERAL PROVISIONS

5.1 Governing Law

This Agreement and all matters arising under it shall be governed by and construed in accordance with the laws in force in British Columbia.

5.2 Survival of Terms

All covenants, agreements, representations and warranties set out in this Agreement shall survive the assignment of the Land Agreement to the Assignee.

5.3 Further Assurances

Each of the parties hereto will promptly do, make, execute or deliver, or cause to be done, made, executed or delivered, all such further acts, documents and things as another party hereto may reasonably require from time to time for the purpose of giving effect to this Agreement and will use reasonable efforts and take all such steps as may be reasonably within its power to implement to their full extent the provisions of this Agreement.

5.4 Burden and Benefit

This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

5.5. Joint and Several Obligations

Every warranty, representation, covenant and agreement hereunder on the part of the Assignor will be deemed to be the joint and several representation, warranty, covenant and agreement of each of the persons comprising the Assignor.

5.6 Counterparts

This Agreement may be signed in counterparts and each of such counterparts will constitute an original document and such counterparts, taken together, will constitute one and the same instrument.

IN WITNESS WHEREOF the parties have executed this Agreement as of the day and year first above written.

KINGSWOOD CAPITAL CORPORATION

by its authorized signatory

Joseph Segal
President

PROGRESSIVE CONSTRUCTION LTD.
by its authorized signatory

Milan Ilich
President

CAMPBELL HEIGHTS DEVELOPMENTS LTD.
by its authorized signatory

Print Name:

CITY OF SURREY

by its authorized signatories

Doug McCallum
Mayor

Margaret Jones
Acting City Solicitor















Appendix "C"



Appendix "D"

