

6.10.00

Form 17  
(Sections 143, 143, 220)

LTA  
SEC 215  
Z154593

Charge: Section 215 Covenant LAND TITLE OFFICE  
NEW WESTMINSTER, B.C. True Value: Nominal

Herewith Fees of \$ 10.00

Address of person entitled to be registered as owner, if different than shown in instrument \_\_\_\_\_

Full name, address, telephone number of person presenting application:

PATELA DOROTHY GOODWID  
CITY OF PORT MOODY  
P.O. BOX 36  
PORT MOODY, B.C.  
V3H 3E1 936-7211

Signature of applicant, solicitor or authorized agent

THIS AGREEMENT made this 8<sup>th</sup> day of August, 1986

BETWEEN:

BARBICAN DEVELOPMENTS LTD., a body corporate, registered in British Columbia under number 289881, having a head office at Suite 2200 - 650 West Georgia Street, Vancouver, British Columbia V6B 4R7

LAND TITLE ACT  
Form 1 (Section 25)  
MEMORANDUM OF REGISTRATION  
Registered on application received on  
the day and at the time within mentioned  
, Registrar  
New Westminster Land Title Office

(the "Grantor")

OF THE FIRST PART

AND:

CITY OF PORT MOODY  
City Hall  
2425 St. John's Street  
Post Office Box 36  
Port Moody, British Columbia  
V3H 3E1

08/19/86 B3643 CHG NOM 10.00

(hereinafter called the "Grantee")

OF THE SECOND PART

WITNESSES THAT WHEREAS:

A. The Grantor is the registered owner in fee simple of

154593

the Land, as hereinafter defined;

B. The Grantor has agreed to enter into a covenant with the Grantee concerning the use of the Land pursuant to section 215 of the Land Title Act, R.S.B.C. 1979, c. 219;

NOW THEREFORE in consideration of the sum of ONE DOLLAR (\$1.00) of lawful money of Canada now paid by the Grantee to the Grantor and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Grantor, the parties agree as follows:

## ARTICLE I

DEFINITIONS

1.01 In this agreement:

"Land" means the land described in Schedule "A" hereto;

"Section 286 Termination and Land Exchange Agreement" means an agreement dated for reference the 8th of August, 1986 made between the Grantor and the Grantee concerning, inter alia, this covenant and the Land.

## ARTICLE II

GRANTOR'S COVENANTS

2.01 The Grantor covenants with the Grantee not to construct any residential buildings on the Land without the prior written authorization of the Grantee.

2.02 The Grantor agrees and acknowledges that the Land shall not be used or built on in contravention of any of the terms of the Section 286 Termination and Land Exchange Agreement, which

**154593**

Agreement is attached to and forms part of this Covenant as Schedule "B" hereto.

2.03 The Grantor acknowledges that as a condition to the issuance by the Grantee of the authorization referred to in section 2.01, the Grantee shall be entitled to regulate the siting, form and exterior finish of the buildings and structures, and require the establishment of landscaping, screening, fencing, areas for play and recreation in multi-family developments, and pavement of roads and parking areas.

2.04 The Grantor acknowledges that as a condition to the issuance by the Grantee of the authorization referred to in section 2.01, the Grantee shall be entitled to require:

- (a) the preservation or dedication to the Grantee of natural water courses, escarpments and ravines within the land which is subject of the authorization, including areas up to 6 metres in width above the top of the bank of such ravines, and the construction of works to preserve, beautify and create access to them in accordance with the terms and conditions of the authorization; and
- (b) that the Grantor provide a performance bond or other security in such amount in in such form as the Grantee may reasonably require, to ensure compliance by the Grantor with the terms and conditions of the authorization, as they relate to landscaping and to construction of the works referred to in subsection (a) of this section.

**154593**

2.05 The Grantor covenants with the Grantee to indemnify and save the Grantee harmless from all loss, damage, costs and liabilities, including fees of solicitors and other professional advisors, arising out of any breach, violation or non-performance of any covenant or agreement herein.

ARTICLE III GRANTEE'S COVENANTS

3.01 The Grantee covenants with the Grantor not to withhold the authorization referred to in section 2.01 provided that the Grantor complies with the regulations and requirements referred to in sections 2.02, 2.03 and 2.04.

ARTICLE IV MISCELLANEOUS

4.01 No term, condition, covenant or other provision herein shall be considered to have been waived by the Grantee unless such waiver is expressed in writing by the Grantee and the waiver by the Grantee of any such breach shall not be construed as or constitute a waiver of any further or other breach of the same.

4.02 The terms and provisions of this agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and assigns.

4.03 In this agreement, unless the context otherwise requires, the singular includes the plural and the masculine includes the feminine gender and a corporation.

4.04 This agreement shall be interpreted according to the laws of the Province of British Columbia.

4.05 Where there is a reference to an enactment of the

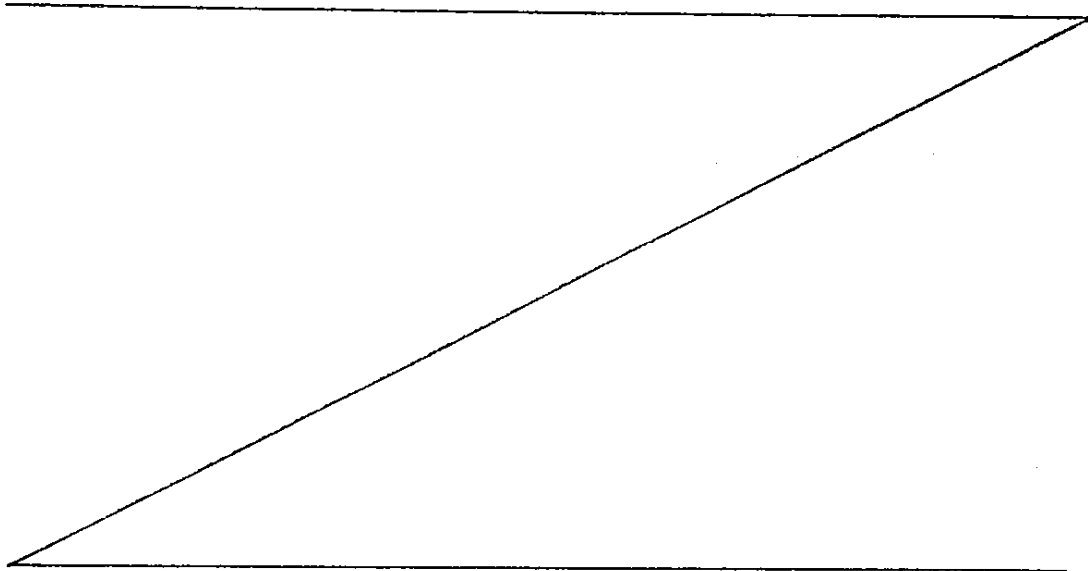
**154593**

Province of British Columbia in this agreement, that reference shall include a reference to any subsequent enactment of like effect of the Province of British Columbia.

4.06 Subject to the terms and conditions of the Section 286 Termination and Land Exchange Agreement, nothing in this covenant shall affect the Grantee's rights and powers in the exercise of its statutory functions under its statutes, bylaws, resolutions, orders and regulations, all of which may be fully exercised in relation to the Lands as if this covenant had not been granted.

4.07 If any section of this agreement or any part of a section is found to be illegal or unenforceable, that part or section, as the case may be shall be considered separate and severable and the remaining parts or sections, as the case may be, shall not be affected thereby and shall be enforceable to the fullest extent permitted by law.

4.08 This agreement and all the covenants and agreements



154593

herein shall be registered as a charge against the Land pursuant to section 215 of the Land Title Act and shall run with the Land.

4.09 This covenant shall be enforceable only by the Grantee.

IN WITNESS WHEREOF the parties hereto executed this agreement on the day and year first above written;

THE COMMON SEAL OF BARBICAN DEVELOPMENTS LTD. was hereunto affixed in the presence of:

[Signature]  
Authorized Signatory

[Signature]  
Authorized Signatory

The Corporate Seal of the City of Port Moody was hereunto affixed in the presence of:

[Signature]  
Mayor

[Signature]  
Clerk

c/s

154593

LAND TITLE ACT

FORM 6  
(Section 46)

PROOF OF EXECUTION BY CORPORATION

I certify that on the 8th day of August, 1986, at Vancouver, in British Columbia,

~~† whose identity has been proved by the evidence on oath of~~ RONALD T. ZIMMER ~~who is~~ personally known to me, appeared (State full name, address, and occupation)

before me and acknowledged to me that he/she is the authorized signatory of BARBICAN DEVELOPMENTS LTD. and that he/she is the person who subscribed his/her name and affixed the seal of the corporation to the instrument, that he/she was authorized to subscribe his/her name and affix the seal to it, †(and that the corporation existed at the date the instrument was executed by the corporation.)

In testimony of which I set my hand and seal of office at Vancouver this 15th day of August, 1986

Stephen McCullough †  A Commissioner for taking Affidavits for British Columbia

\*Where the person making the acknowledgment is personally known to the officer taking it, strike out these words in brackets. †These words in brackets may be added, if the applicant wishes the registrar to exercise his discretion under section 162 (5) not to call for further evidence of the existence of the corporation. ‡Write name and qualifications under section 48, e.g., A Commissioner for Taking Affidavits for British Columbia.

154593

SECTION 215 COVENANT - SCHEDULE "A"

BARBICAN DEVELOPMENTS LTD.

The Lands referred to in Section 1.01 of this Covenant are:

- 1. City of Port Moody  
Parcel Identifier 001-422-103

287556E

Parcel 1 except firstly: part of road on Plan 69309; secondly: Parcel 281, Reference Plan 66204 thirdly, part subdivided by Plan 71754; District Lots 347 and 348, Group 1, New Westminster District, Explanatory Plan 69157

- 2. City of Port Moody  
Parcel Identifier 000-674-117

467371E

Parcel "A" except parts subdivided by Plan 69678, District Lots 349 and 350, Group 1, New Westminster District, Plan 67900



SECTION 215 COVENANT  
Schedule "B"

154593

THIS AGREEMENT made the *8<sup>TH</sup>* day of *AUGUST*,  
1986.

BETWEEN:

BARBICAN DEVELOPMENTS LTD., a  
body corporate, registered in  
British Columbia under number  
289881, having a head office at  
Suite 2200 - 650 West Georgia  
Street, Vancouver, British Columbia  
V6B 4R7

("Barbican")

OF THE FIRST PART

AND:

CITY OF PORT MOODY  
Post Office Box 36  
2425 St. John's Street  
Port Moody, British Columbia  
V3H 3E1

(the "City")

OF THE SECOND PART

WHEREAS:

- A. Terms used in these recitals are defined in Article I;
- B. Barbican is a real estate developer and it owns the Barbican Lands in Port Moody, British Columbia, all of which were or are intended to be developed as residential subdivisions;
- C. The City owns the City Lands;
- D. The 286 Agreement established a program for the financing of construction of certain works and services in, on and for the benefit of the area specified in the 286 Agreement, the costs of which are payable by owners of land in such

154593

CITY OF PORT MOODY -- BARBICAN DEVELOPMENTS LTD.

SECTION 286 TERMINATION AND LAND EXCHANGE AGREEMENTCONTENTS

<u>ARTICLE</u>		<u>PAGE</u>
I.	Definitions and Interpretation	2
II.	Implementation of this Agreement	10
III.	Acknowledgments and Attributions of Values	10
IV.	Conveyance of Lands and Mechanics of Implementation	11
V.	Settlement and Acknowledgment of Certain Obligations	14
VI.	Neighbourhood I Works, Roads and Parks	15
VII.	General Subdivision Development by Barbican	17
VIII.	Development Controls for the North Shore	18
IX.	City Recovery of Development Costs	20
X.	Accounting, Audit, Cost Adjustment	22
XI.	Preliminary Works	24
XII.	Miscellaneous	25

SCHEDULES

"A"	Neighbourhood I Works
"B"	Preliminary Works
"C"	Neighbourhood I School Site Exchange Agreement
"D"	286 Termination Agreement
"E"	Plan of Barbican Lands and City Lands
"F"	Plan of Exchange Lands and Settlement Lands
"G"	Plan of Barbican Implementation Lands
"H"	Plan of Neighbourhood I, Community Park and Parkettes
"I"	Plan and description of Works to be Constructed by the City and Cost-Shared
"J"	Section 215 Covenant (Barbican)

154593

- 2 -

specified area and the City has collected some of these costs from Barbican's predecessor and other of such costs are or may but for this Agreement, become due by Barbican;

E. The City desires to enter into the 286 Termination Agreement with the Province;

F. Barbican is required by the City to pay for certain of the Neighbourhood I Works, to dedicate or convey lands to the City for parks in connection with its land holdings, and would anticipate further obligations to the City respecting works, services and parks in connection with subdivision developments not yet in process; and

G. The City has obligations to Barbican to complete or pay for certain of the Neighbourhood I Works, to convey lands to Barbican pursuant to the Zone 3 Reservoir Agreement and the Neighbourhood I School Site Exchange Agreement.

NOW THEREFORE, in consideration of the premises, the Neighbourhood I School Site Exchange Agreement, the Zone 3 Reservoir Agreement and the covenants, agreements and acknowledgments herein set forth and for other good and valuable consideration (the receipt and sufficiency whereof in all respects is hereby by each of the parties acknowledged) the parties agree each with the other as follows:

154593

- 3 -

ARTICLE IDEFINITIONS AND INTERPRETATION

1.01 In this Agreement:

"Adjustment" means the sum of all Installments paid by Barbican or its successors in title under section 9.05;

"Application Area" means a portion of Barbican's Developable Area expressed in hectares, as referred to in section 9.05;

"Area One" means the area defined as such in the 286 Termination Agreement;

"Area Two" means the area defined as such in the 286 Termination Agreement;

"Area Three" means the area shown as such on Schedule "I";

"Area Four" means the area shown as such on Schedule "I";

"Budget" means the budget for the Part I Works and Part II Works as set out in Schedule "I" as amended from time to time pursuant to Article X;

"Barbican" means the party of the first part;

"Barbican's Developable Area" means that part of the Barbican Implementation Lands which is suitable for

154593

- 4 -

residential development as determined by the City pursuant to Sections 9.02 and 9.03;

"Barbican Lands" means all of the parcels of land identified as such on the plan attached hereto as Schedule "E";

"Barbican Implementation Lands" means the parts of the Barbican Lands comprising all of the parcels of land identified as such on the plan attached hereto as Schedule "G";

"Barbican 286 Debt" means the indebtedness attributed to Barbican referred to in Section 3.01(b);

"Barbican Payment" means the sum paid by Barbican to the City and interest thereon referred to in Section 3.01(c);

"Barbican's Engineer" means any independent professional engineer, cost consultant or quantity surveyor from time to time appointed by Barbican or their duly authorized representatives;

"Barbican Share" means that portion of the Cost of Part I and Part II Works as determined by the formula set out in Section 9.02, as re-calculated from time to time pursuant to Section 10.02, which is payable by Barbican to the City;

"City" means the party of the second part;

"City Lands" means all of the parcels of land identified as such on the plan attached hereto as Schedule "E";

154593

- 5 -

"City Engineer" means the Director of Engineering Services from time to time for the City or his duly authorized representatives;

"Community Park" means that area of land comprising a proposed 20 acre park as shown in its location on the plan attached hereto as Schedule "H", the configuration of which may be altered by the City;

"Completion Date" means the date that is 30 days following the date the Order in Council is enacted, provided that if the Completion Date is not a day when the New Westminster Land Title Office is open for business then it shall be the day next following on which the New Westminster Land Title Office is open for business;

"Cost of Part I and Part II Works" means those costs set out in Schedule "I" attached hereto, and includes:

- (i) professional consulting fees including planning, surveying, engineering and legal expenses,
- (ii) interest on net money expended by the City, including interest on City funds employed, to finance the construction of the Part I Works and Part II Works calculated from the date of such expenditure at a rate equal to the lesser of: (i) the actual rate of interest paid by the City on moneys borrowed for such

154593

- 6 -

expenditure, or (ii) the rate of 1% over the "prime rate" published from time to time by the Royal Bank of Canada at its main branch at Vancouver, British Columbia,

- (iii) compensation paid by the City for land within Area One or Area Two acquired for the purposes of the Part I Works and Part II Works or that is injuriously affected by them and expenses of the City in connection with determining such compensation,
- (iv) the fair market value of land owned or acquired by the City in Area One or Area Two and which is used for the purposes of the Part I Works and Part II Works, and
- (v) administration fees and overhead fees not exceeding four percent of the aggregate amount of the foregoing,

but until the construction of the Part I Works and Part II Works is complete, means the estimated Cost of the Part I Works and Part II Works as shown in the Budget and amended from time to time pursuant to Article X;

"Exchange Lands" means the parts of the Barbican Lands comprising all of the parcels identified as such on the plan attached hereto as Schedule "F";

"Installment" means the sum determined from the following formula:

- 7 -

154593

Application  
Area x (Barbican - Adjustment) = Installment  
 Undeveloped (Share)  
 Area

"Neighbourhood I" means all of the parcels of land identified as such on the plan attached hereto as Schedule "H";

"Neighbourhood I School Site Exchange Agreement" means the agreement between the parties attached as Schedule "C";

"Neighbourhood I Works" means the waterworks, drainage works, road works, landscaping and parkland development works particularly described in Schedule "A", which Schedule includes the works and the estimated date when each of them will be completed;

"Neighbourhood I Works Debt" means the indebtedness attributable to Barbican referred to in Section 3.01(d);

"Order in Council" means an order in council under Section 15(2) of the Financial Administration Act, S.B.C. 1981, c. 15, approving the Waiver by the Province of interest under the 286 Agreement from and after December 31, 1984.

"Part I Works" and "Part II Works" means the works and services described in Part I and Part II respectively of Schedule "I";

Preliminary Works" means the sanitary sewer, electrical, telephone and road works particularly described in Schedule "B" to be located and aligned



154593

- 8 -

within or adjacent to the Water Street and East-West Collector rights of way (as such rights of way are shown in Schedule "B");

"Province" means Her Majesty the Queen in right of the Province of British Columbia;

"Section 215 Covenant (Barbican)" means a covenant made pursuant to section 215 of the Land Title Act, R.S.B.C. 1979, c. 219 in the form annexed as Schedule "J";

"Settlement Lands" means the parts of the City Lands comprising all of the parcels identified as such on the plan attached hereto as Schedule "F";

"Total Developable Area" means that portion of Areas Three and Four, expressed in hectares, which is suitable for residential development as determined by the City pursuant to sections 9.03 and 9.04;

"286 Agreement" means the agreement dated April 6, 1982 authorized by Bylaw 1524 and amended May 14, 1984 and June 28, 1984, between the City and the Province pursuant to Section 286 of the Municipal Act R.S.B.C. 1979, c. 290 as amended;

"286 Termination Agreement" means an agreement in the form of the agreement attached hereto as Schedule "D" to be entered into between the City and the Province whereby in consideration, inter alia, of the conveyance by the City to the Province of certain lands, the City's obligations to the Province under the 286

**154593**

- 9 -

Agreement will be satisfied and which Agreement is incorporated by reference in this Agreement;

"Undeveloped Area" means that portion of Barbican's Developable Area, expressed in hectares, in respect of which Installments remain to be paid pursuant to section 9.05; and

"Zone 3 Reservoir Agreement" means the agreement between the parties dated May 28, 1985.

1.02 Wherever the context of this Agreement requires, the masculine gender shall include the feminine or neuter, and a singular number shall include the plural and vice versa.

1.03 The headings preceding the text, articles and sections hereof have been inserted for convenience and reference only and shall not be construed so as to affect the meaning or effect of this Agreement.

1.04 The Schedules attached to and incorporated as part of this Agreement are as follows:

- "A" Neighbourhood 1 Works
- "B" Preliminary Works
- "C" Neighbourhood 1 School Site Exchange Agreement
- "D" 286 Termination Agreement
- "E" Plan of Barbican Lands and City Lands
- "F" Plan of Exchange Lands and Settlement Lands
- "G" Plan of Barbican Implementation Lands
- "H" Plan of Neighbourhood I, Community Park and Parkettes
- "I" Plan and description of Works to be Constructed by the City and Cost-Shared

154593

- 10 -

"J" Section 215 Covenant (Barbican)

ARTICLE II

IMPLEMENTATION OF THIS AGREEMENT

2.01 It is intended by the parties that this Agreement shall be a present agreement but that none of its provisions shall be implemented until the Completion Date and if the Completion Date has not occurred and the registrations referred to in Section 4.02 have not been completed by December 31, 1986, then this Agreement shall be terminated, cancelled and of no further force and effect on December 31, 1986 and without need for further agreement between the parties none of the provisions hereof shall thereafter be binding on either party.

2.02 Notwithstanding Section 2.01, Barbican agrees that it will upon execution of this Agreement forthwith upon request by the City execute and deliver a covenant prepared by the City pursuant to Section 215 of the Land Title Act R.S.B.C. 1979, c. 219 to be registered by the City as a first charge against title to any or all of the Barbican Lands in the form attached as Schedule "J". The City agrees to discharge such covenant at its expense as the terms of the covenant are satisfied.

ARTICLE III

ACKNOWLEDGEMENTS AND ATTRIBUTIONS OF CERTAIN VALUES

3.01 The parties acknowledge, confirm, consent and agree that in entering into this Agreement they have attributed and

**154593**

- 11 -

derived the following values and costs as referable to the following matters:

- (a) \$5,733,991.87 as the sum which, effective December 31, 1984, remained due and owing by the City to the Province on account of unpaid principal and interest (on the basis that interest ceased to accrue on December 31, 1984) pursuant to the 286 Agreement;
- (b) \$1,875,015.30 (being the Barbican 286 Debt) as the portion of the said \$5,733,991.87 which, but for the 286 Termination Agreement and this Agreement, would have been payable by Barbican to the City;
- (c) \$329,618.56 (being the Barbican Payment) as that portion of the principal sum and interest earned on such principal to December 31, 1985 aggregating \$442,457.31 previously paid by Barbican's predecessor and the City, the payment having been imposed pursuant to the 286 Agreement; and
- (d) \$852,967.50 (being the Neighbourhood I Works Debt) as Barbican's agreed 57.75% share of the aggregate estimated \$1,477,000.00 current cost to the City to complete the Neighbourhood I Works.

#### ARTICLE IV

#### CONVEYANCE OF LANDS AND MECHANICS OF IMPLEMENTATION

##### 4.01 Copies of Documents

Not less than 10 days prior to the Completion Date:

154593

- 12 -

- (a) Barbican will deliver to the City:
- (i) a copy, as executed in registrable form, of a transfer or transfers of the Exchange Lands in Form 23 prescribed by the Land Title Act of British Columbia;
  - (ii) copies or prints of such subdivision or reference plans in registrable form as are necessary to create the Exchange Lands duly approved and consented to by all persons whose approval or consent is required;
  - (iii) copies, as executed by the holders in registrable form, of releases or discharge of all encumbrances affecting the Exchange Lands save for easements for utilities;
- (b) the City will deliver to Barbican:
- (i) a copy, as executed in registrable form, of a transfer or transfers of the Settlement Lands in Form 23 prescribed by the said Land Title Act;
  - (ii) copies or prints of such subdivision or reference plans in registrable form as are necessary to create the Settlement Lands duly approved and consented to by all persons whose approval or consent is required;
  - (iii) copies, as executed by the holders in registrable form, of releases or discharges of all encumbrances affecting Barbican Lands

- 13 -

154593

which relate to the Barbican 286 Debt and the Settlement Lands save for easements for utilities and two covenants pursuant to Section 215 of the Land Title Act incorporating the terms of this Agreement as it affects use and development of the Settlement Lands.

4.02 Closing Procedure

- (a) On the Completion Date each party shall deliver to the other the appropriate documents referred to in Section 4.01 at a closing which shall commence at 9:00 o'clock in the forenoon on the Completion Date at the New Westminster Land Title Office or on such other date (also herein called the "Completion Date") or at such other location as the parties may agree.
- (b) All documents save the said transfers, plans and discharges shall be tabled until the said transfers, plans and discharges have been accepted as concurrent registrations by the New Westminster Land Title Office whereupon all other documents will be released to the respective parties and possession of the Exchange Lands shall pass to the City and possession of the Settlement Lands shall pass to Barbican.
- (c) The parties acknowledge that implementation of the 286 Termination Agreement requires conveyance by the City to the Province as a concurrent

- 14 -

154593

registration on the Completion Date of a portion of the Exchange Lands.

4.03 Risk

The Exchange Lands shall be at the risk of Barbican until the completion of their registration in the name of the City as referred to in Section 4.02 and thereafter shall be at the risk of the City and the Settlement Lands shall be at the risk of the City until the completion of their registration in the name of Barbican and thereafter shall be at the risk of Barbican.

4.04 Survey and Legal fees and costs

Subdivision and survey costs incurred to create or convey any of the parcels referred to in this Agreement and fees in connection with registration of the transfer of the Settlement Lands and the transfer of the Exchange Lands shall be borne as to 57.75% thereof by Barbican and as to 42.25% thereof by the City. Each party shall prepare the applicable documents to be delivered by it pursuant to Section 4.01 and any other documents required to complete the conveyances herein at its expense. Each party shall pay its own solicitors' fees.

ARTICLE V

SETTLEMENT AND ACKNOWLEDGMENT OF CERTAIN OBLIGATIONS

5.01 Barbican agrees that it shall have no further claim against the City for the Barbican Payment or any other money paid to the City pursuant to the 286 Agreement and that such sums are and shall be deemed to be fully paid and satisfied.

- 15 -

5.02 The City agrees that it shall have no further claim against Barbican for the Barbican 286 Debt or any other money payable by Barbican arising out of the 286 Agreement or for the Neighbourhood I Works Debt or the Neighbourhood I Works themselves, irrespective of the actual cost of the Neighbourhood I Works, and that all such sums are and shall be deemed to be fully paid and satisfied.

5.03 The parties agree that neither shall have any further obligation or liability to the other pursuant to the Neighbourhood I School Site Exchange Agreement (other than pursuant to Section 7 of that Agreement), nor for the Reservoir Deficiency under the Zone 3 Reservoir Agreement.

5.04 Barbican agrees that it will pay to the City \$48,572.15 as its agreed share of the cost of roadworks done by the City for the City Lands as a condition of subdivision approval of any of the Settlement Lands and that this condition will be incorporated into a Land Title Act Section 215 Covenant to be registered against title to the Settlement Lands prior to the Completion Date, and the City agrees that it will at its expense discharge such covenant forthwith upon receipt of payment of the \$48,572.15 or security for such payment satisfactory to the City.

#### ARTICLE VI

#### NEIGHBOURHOOD I WORKS, ROADS AND PARKS

6.01 The City shall, at its expense, cause the Neighbourhood I Works to be fully completed in a good and workmanlike manner in accordance with the schedule for the completion thereof set out in Schedule "A", except if there is delay by reason of any



- 16 -

strike, lockout or other industrial disturbance, explosion, flood, natural disaster, breakage or accident to machinery, inability to obtain labour, materials or equipment, beyond the control of the City and which by the exercise of due diligence by the City could not have been prevented, then, and in such event, the period of delay occasioned by such cause shall be added to the particular time period.

6.02 The City agrees that, from time to time as Barbican makes application to the approving officer of the City for permissions for subdivision of lands in Neighbourhood I, the City shall not require that Barbican do or pay for the Neighbourhood I Works and the City will not withhold or delay consents to any such applications because the Neighbourhood I Works are incomplete and if the approving officer of the City requires Barbican to do or pay for any of the Neighbourhood I Works or withholds or delays any subdivision approvals as a result of default of the City in its obligations under Section 6.01, the City will indemnify and save Barbican harmless against any loss or damage occasioned thereby.

6.03 In connection with Barbican's residential subdivision development from time to time of any part of Neighbourhood I, the City agrees that, subject to Section 6.04, it will not require Barbican to develop or provide any land for, or pay any development expenditures in connection with, parks or the other uses specified in Section 679(1)(a) of the Municipal Act R.S.B.C. 1979, c. 290 as amended.

6.04 Barbican agrees to construct and provide two Parkettes of an aggregate area of 1 acre, in the locations shown on Schedule "H", or such other locations as the parties acting reasonably may agree, as a condition of approval of its residential subdivision of lands in Neighbourhood I adjacent to the Parkettes.

6.05 The City acknowledges that it intends to develop the lands comprised in the area designated on Schedule "H" as Community Park as a park and agrees that if it does not do so by May 31, 2010, it will convey to Barbican a single parcel of 4.6 acres which is suitable for residential subdivision development, such parcel to be located as Barbican may then specify at the northeast corner of the intersection of Heritage Mountain Boulevard and the East-West Arterial Road or adjacent to Turner's Creek Ravine on the north side of the East-West Arterial Road or, failing specification by Barbican as aforesaid, at such other location as the parties acting reasonably may agree.

6.06 The City agrees that if before May 31, 2010, it elects not to develop the lands comprised in the area designated on Schedule "H" as Community Park as a park it will, when it so elects, convey the 4.6 acre parcel referred to in Section 6.05 to Barbican.

#### ARTICLE VII

##### GENERAL SUBDIVISION DEVELOPMENT BY BARBICAN

7.01 The parties acknowledge that this Agreement is not intended to restrict the City in imposing such conditions as to Barbican's subdivision development of the Barbican Implementation Lands or, save as specified in this Agreement, within Neighbourhood I as would be usual for the City to impose or to prevent the City from entering into such agreements with others as Barbican would expect to benefit from but the City agrees that Barbican shall have no obligation to convey or otherwise dedicate in excess of 3.3% of the Barbican Implementation Lands for park purposes.

ARTICLE VIIIDEVELOPMENT CONTROLS FOR THE NORTH SHORE

8.01 As two of the three owners (together with the Province) of land in Area One, Barbican and the City acknowledge and agree that a unified system of building and development controls for Area One is desirable, and that this system should be controlled and administered by the City and enforced through the Section 215 Covenants provided for in Section 2.02 and other covenants to be obtained by the City.

8.02 Barbican acknowledges and agrees that the City shall be entitled to require any person proposing to develop any of the Barbican Lands to obtain a development authorization from the City prior to issuance of a building permit or approval of a plan of subdivision, which development authorization may:

- (a) regulate the siting, form and exterior finish of buildings and structures, and require the establishment of landscaping, screening, fencing, areas for play and recreation in multi-family developments, and pavement of roads and parking areas;
- (b) upon subdivision, require the preservation or dedication to the City of natural water courses, escarpments and ravines within the land which is the subject of the authorization, including areas up to 6 metres in width above the top of the bank of such ravines, and the construction of works to preserve, beautify and create access to them in accordance with the terms and conditions of the applicant for development authorization; and

- (c) require that the applicant for development authorization provide a performance bond or other security in such amount and in such form as the City may reasonably require, to ensure compliance by the applicant with the terms and conditions of the authorization as they relate to landscaping and to construction of the works referred to in subsection (b) of this section.

8.03 In order to ensure that the development controls set out in this Article are binding upon Barbican and its successors in title to Barbican Lands, Barbican shall:

- (a) execute and deliver the Section 215 Covenant (Barbican) to the City not later than 5 days prior to the Completion Date; and
- (b) ensure that the City is able on the Completion Date, to register the Section 215 Covenant (Barbican) as a charge in favour of the City against the title to the Barbican Lands in priority to all financial charges.

8.04 The City shall obtain and register Covenants containing provisions equivalent to Sections 2.03 and 2.04 of the Section 215 Covenant (Barbican) against all of the land within Area One.

8.05 The City shall apply the controls provided for in this Article equally to all lands within Area One, regardless of ownership of the affected land.

ARTICLE IX

COST SHARING AND DEVELOPMENT COST CHARGES

9.01 The City shall bear the Cost of the Part I Works and Part II Works and Barbican shall reimburse the City for the Barbican Share of the Part I Works and Part II Works by way of the Installments in the manner and at the times specified in this Article and Article X. In addition, the City shall not withhold or delay development approvals for the Barbican Lands on the basis that the Part I or Part II Works other than those set out in section 6 of Part I of Schedule "I" are incomplete.

9.02 The Barbican Share shall be determined by the following formula:

$$\begin{aligned}
& (1) \text{ Barbican Developable Area} \\
& \quad \frac{\text{in Areas Three and Four}}{\text{Total Developable Area}} \times \text{Cost of Part I Works} \\
& \quad \text{in Areas Three and Four} \\
& \qquad \qquad \qquad \text{plus} \\
& (2) \text{ Barbican Developable Area} \\
& \quad \frac{\text{in Area Four}}{\text{Total Developable Area}} \times \text{Cost of Part II Works} \\
& \quad \text{in Area Four} \\
& = \text{"Barbican Share"}
\end{aligned}$$

9.03 Subject to Section 9.04, Barbican acknowledges and agrees that:

- (a) the City shall have the sole discretion to determine, and thereafter on each anniversary of the Completion Date to revise its determination of, the Total Developable Area and Barbican's Developable Area; and

- (b) the determination by the City of the Total Developable Area and Barbican's Developable Area shall constitute conclusive evidence of those areas.

9.04 The City shall, when determining the Total Developable Area and Barbican's Developable Area, employ the same procedures, factors and requirements for each such area.

9.05 If, at the request of Barbican or its successors in title:

- (a) the City issues a development permit or a building permit that affects an Application Area; or
- (b) the approving officer for the City approves, for deposit in the Land Title Office, a strata plan or a subdivision plan to subdivide an Application Area into residential lots;

Barbican shall pay to the City forthwith on demand by the City, the Installment in respect of such Application Area.

9.06 From and after the Completion Date, the City will not, in respect of the Barbican Lands or Settlement Lands impose, levy, assess or otherwise collect or attempt to collect directly or indirectly any development cost charges of any nature or description whatsoever other than:

- (a) the Barbican Share of the Cost of Part I and Part II Works; and
- (b) application, processing and inspection fees, in accordance with the City's bylaws; and
- (c) a subdivision processing and inspection fee in the

**154593**

- 22 -

amount of 3.5% of the cost of subdivision servicing works.

9.07 Barbican acknowledges that nothing in section 9.06 shall limit the ordinary jurisdiction of the City to levy or assess:

- (a) such general taxes, rates and charges on the Barbican Lands or Settlement Lands as are levied or assessed on land elsewhere within the boundaries of the City;
- (b) local improvement charges in respect of the Barbican Lands or Settlement Lands to recover the cost of those works, if any, provided by the City to the Barbican Lands or Settlement Lands after the Barbican Lands or Settlement Lands is developed for residential purposes; and
- (c) latecomer charges in accordance with Section 990 of the Municipal Act.

ARTICLE X

ACCOUNTING AND AUDIT, COST ADJUSTMENT

10.01 When items listed in sections (b) and (c) below are finalized and on and on the 31st day of January of each year, the City shall amend the Budget in order to take into account:

- (a) all reasonable revisions to the estimated Cost of the Part I Works and Part II Works;
- (b) the actual cost of any item of the Part I Works and Part II Works which were completed during the year ending on such anniversary; and

- 23 -

154593

- (c) any reduction in the Cost of Part I and Part II Works arising out of Section 10.07.

10.02 On each occasion that the Budget is amended pursuant to section 10.01, the City shall:

- (a) recalculate the Barbican Share based upon the amended Budget;
- (b) calculate the amount of the Adjustment for the period between the date of this agreement and the date of such amendment; and
- (c) forthwith deliver to Barbican notice of the amended Budget, the Adjustment and the recalculated Barbican Share.

10.03 For the purpose of this agreement, each party shall establish, keep and maintain books of accounts and shall cause to be made therein entries of all matters, terms, transactions and items relating to the works which each party is required to construct pursuant to the works which each party is required to construct pursuant to this agreement and shall keep those books of account together with copies of all tender calls, quotations, contracts, correspondence, invoices, vouchers and other documents relating thereto intact for a period of no less than two years after such works have been fully completed.

10.04 Each party shall have free access at all reasonable times to inspect and make copies of the books and accounts referred to in section 10.03 and to conduct an audit of them.

10.05 Not later than 3 months following completion of each item of the Part I and Part II Works, the City shall prepare and



- 24 -

154593

deliver to Barbican a statement showing the actual Part I Costs and Part II Costs for that item.

10.06 In the event that the City finances all or part of the Part I Works or Part II Works it shall use its best efforts to ensure that the terms of such financing do not render the City ineligible for capital grants or debt service grants available under statutes or programs of the Government of British Columbia and the Government of Canada or either of them and the City shall apply for such grants.

10.07 In the event the City receives a grant referred to in section 10.06, the amount of such grant shall be deemed to have reduced the Cost of Part I and Part II Works by a sum equal to the amount of such grant.

#### ARTICLE XI

##### PRELIMINARY WORKS

11.01 The City shall be responsible for completion of the Preliminary Works, provided that Barbican may at its option complete all or part of the Preliminary Works and if, prior to the City constructing the Preliminary Works, Barbican for any reason constructs all or part of the Preliminary Works or works which obviate the need for all or part of the Preliminary Works, the City shall within 90 days of the completion of those works by Barbican, reimburse to Barbican the amount of the cost of completing those works or that part of the works, as shown in Schedule "B", as estimated costs, notwithstanding the actual costs incurred by Barbican.

11.02 Any works and services in excess of the standards prescribed in Schedule "B" shall not form part of the Preliminary

154593

- 25 -

Works for the purposes of Section 8.01, and if the City is required by a third party to complete works and services which benefit Barbican in excess of those standards, Barbican shall forthwith pay to the City the actual cost of that portion of the works and services which is in excess of the standards.

11.03 The City will use its best efforts to close that portion of Water Street adjoining the Settlement Lands and convey the closed portion to Barbican at no cost, upon provision of an alternate collector road access to the East-West Arterial Road from Heritage Mountain Boulevard.

## ARTICLE XII

### MISCELLANEOUS

#### 12.01 Entire Agreement and Amendment

This Agreement constitutes the entire Agreement between the parties, however, this Agreement may be amended in writing at any time and from time to time provided that each such amendment has been duly authorized, executed and delivered to both of the parties.

#### 12.02 Notice

Any notice, direction or request required or permitted to be given hereunder shall be in writing and shall be given by personal service, telex, telegram or by registered letter, with postage thereon fully prepaid, to be addressed to the recipient at its address stated on the first page of this Agreement or to such other address as each party may from time to time advise the

154593

- 26 -

other in writing. Any notice, direction or request delivered personally or by telex or telegram shall be deemed to have been received by and given to the addressee on the day of delivery. Any notice, direction or request mailed as aforesaid shall be deemed to have been received by and given to the addressee on the third business day following the date of mailing except in the event of a disruption of postal service in which event notice shall be delivered personally or given by telex or telegram. Copies of any of the foregoing for Barbican shall be communicated as aforesaid to its solicitors:

Shrum, Liddle & Heberton  
Barristers & Solicitors  
1300 - 999 West Hastings Street  
Vancouver, B.C.  
V6C 2W5

12.03 Provisions Severable

Every provision in this Agreement is intended to be several, provided that, if any provision of this Agreement does not conform to the applicable law or is invalid for any reasons whatsoever, such non-conformity or invalidity shall not affect the validity of the remaining provisions of this Agreement.

12.04 Law of British Columbia

This Agreement shall be interpreted and construed pursuant to the laws of the Province of British Columbia.

154593

- 27 -

12.05 Successors

This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors, administrators, successors-in-title and assigns to the intent, inter alia, that successors-in-title to and purchasers from Barbican from time to time of any part of the Barbican Lands or Settlement Lands and who have assumed those burdens of Barbican contained in this Agreement which are referable to the applicable part shall be entitled to the benefit of any applicable agreements of the City herein contained.

12.06 Time of Essence

Time shall be of the essence of this Agreement.

12.07 Counterparts

This Agreement may be executed in one or more counterparts from time to time, each of which shall be considered an original and all of which taken together shall constitute a single Agreement between the parties hereto.

12.08 Further Assurances

The parties hereto agree to execute and deliver such further and other documents and perform and cause to be performed such further and other acts and things as may be necessary or desirable in order to give full effect to this Agreement and every part thereof and will covenant with successors-in-title and purchasers of Barbican to give effect to the intention expressed in Section 12.05.

154593

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12.09 Amendments

The provision of this agreement may be amended, altered or varied by mutual agreement between the parties evidenced in writing.

IN WITNESS AND IN AGREEMENT WHEREOF the parties hereto have caused this Agreement to be duly executed as of the date first above written.

THE COMMON SEAL OF BARBICAN )  
DEVELOPMENTS LTD. was hereunto )  
affixed in the presence of: )

[Signature] )  
[Signature] )

THE CORPORATE SEAL OF THE )  
CITY OF PORT MOODY was here- )  
unto affixed in the presence )  
of: )

[Signature] )  
A | MAYOR )  
[Signature] )  
A | CLERK )

Authorizing Bylaw adopted the )  
7<sup>th</sup> day of July, )  
1986. )

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