

TERMS OF INSTRUMENT – PART 2

DEVELOPMENT LANDS SECTION 219 COVENANT

THIS AGREEMENT dated for reference November 26, 2015

BETWEEN

28165 YUKON INC., 5439 Buckingham Avenue, Burnaby,
British Columbia, V5E 1Z9

(the “Grantor”);

AND

SQUAMISH-LILLOOET REGIONAL DISTRICT, P.O.
Box 219, 1350 Aster Street, Pemberton, British Columbia,
VON 2L0

(the “Grantee”).

WITNESSES THAT WHEREAS:

A. The Grantor is the registered owner of the land in the Squamish-Lillooet Regional District legally described as:

PID: 027-752-330
Lot A District Lot 2247, Group 1,
New Westminster District Plan BCP39086

(the “Lands”); and

B. The Grantor has applied for a rezoning of the Lands further to “Squamish-Lillooet Regional District Electoral Area C Zoning Bylaw No. 765, 2002, Amendment Bylaw 1442-2015” (“Zoning Amendment Bylaw”) in order to permit a clustered development of up to 108 residential dwellings and acknowledging that it is in the public interest that the development and use of the Lands be restricted in accordance with section 219 of the *Land Title Act*, as amended, the Grantor wishes to grant this Covenant and indemnity.

NOW THEREFORE THIS AGREEMENT WITNESSES that pursuant to section 219 of the *Land Title Act*, and in consideration of the premises and the sum of one dollar (\$1.00), now paid by the Grantee to the Grantor (the receipt and sufficiency whereof is hereby acknowledged), the Grantor covenants and agrees with the Grantee as follows:

Definitions

1. In this Agreement:

- (a) “Parcel”, for the purposes of this section 1, has the same meaning as in the *Land Title Act* but if the Lands are subdivided under the *Strata Property Act*, ‘parcel’ does not include “common property” as defined in that Act;

- (b) “Qualified Environmental Professional” or “QEP” means an applied scientist or technologist, acting alone or together with another qualified environmental professional, if the individual is registered and in good standing in British Columbia with an appropriate professional organization constituted under an Act, is acting under that association’s code of ethics and subject to disciplinary action by that association, and the individual is acting within that individual’s area of expertise;
- (c) Unless otherwise stated, the definitions of the Grantee’s Squamish-Lillooet Regional District Electoral Area C Zoning Bylaw No. 765, 2002, as amended, shall apply to the interpretation of this Agreement.

Development Only in Accordance with Covenant

- 2. Notwithstanding greater or broader uses, density or other regulations in the Grantee’s Squamish-Lillooet Regional District Electoral Area C Zoning Bylaw No. 765, 2002, as amended, the Grantor covenants and agrees that the Lands shall not be subdivided, developed, built upon, or used except in accordance with the following:
 - (a) Lot A may not be subdivided to create more than 96 parcels;
 - (b) a building on a parcel may only be used for the uses permitted in subsections 16.1(l)(a), (b), (c), (d) and (e) of the CD GRE Zone as identified in the Zoning Amendment Bylaw, if the parcel is serviced:
 - (i) by an advanced wastewater treatment plant (including membrane extended aeration activated sludge system, generally as described in the Novatec Consultants Inc. report entitled “Environmental Impact Study — Green River Estates Wastewater Treatment and Disposal” dated February 2006, that is built to a sufficient capacity to serve the parcels, at the Grantor’s sole cost), or by the Resort Municipality of Whistler’s waste water treatment plant, and all sewage-generating buildings on that parcel must be connected to either treatment plant (for certainty, septic systems are not permitted);
 - (ii) by a well-based source of potable water; and
 - (iii) with access, by way of highway or common property access route, or a combination thereof to Highway 99;
 - (c) The floor area for a principal dwelling shall be determined on the basis of the parcel area times 0.2 but:
 - (i) for a parcel of less than 0.4 hectares the maximum floor area shall be 430 square meters;

- (ii) for a parcel of more than 0.4 hectares but less than 0.6 hectares the maximum floor area shall be 550 square meters; and
- (iii) for a parcel of more than 0.6 hectares the maximum floor area shall be 650 square meters.

being calculated on the basis generally applicable within the Regional District as set out in the Grantee's Squamish-Lillooet Regional District Electoral Area C Zoning Bylaw No. 765, 2002, as amended;

- (d) all building and construction shall comply with parts 1 through 30 of the Fire Smart and Sustainable Design Guidelines attached as Appendix A to this Covenant;
- (e) the installation of fire suppression sprinklers is mandatory in all principal residential buildings;
- (f) with respect to environmental monitoring and reporting:
 - (i) a QEP shall be on site during initial site preparation and construction work carried out by the developer, and during all other phases of construction as deemed appropriate by the QEP;
 - (ii) site preparation and construction works shall be monitored by a QEP;
 - (iii) the QEP shall submit an environmental monitoring report to the Planning Department of the Squamish-Lillooet Regional District at the conclusion of the works verifying that the following guidelines have been met:
 - (A) prior to land clearing a plant and wildlife survey shall be conducted by a QEP of the areas to be cleared or impacted by clearing, to identify the location of active bird nests, important wildlife trees, and the presence of rare and endangered plant and animal species;
 - (B) where land clearing activity is proposed between April 1st and July 31st a QEP shall conduct a bird nest survey within seven days of the proposed clearing;
 - (C) in accordance section 34 of the *Wildlife Act* - which states that a bird or its egg, or the occupied nest of a bird or its egg, may not be destroyed - active nests shall be protected by a suitable buffer, as recommended by the QEP;
- (g) notwithstanding section 1.1(f)(iii)(C) the nest of an eagle, peregrine falcon, gyrfalcon, osprey, heron or burrowing owl shall be provided with a 50 meter buffer of undisturbed vegetation whether occupied or not;

- (h) existing topsoil shall be collected, stored and reused on the Lands;
- (i) with respect to stormwater management:
 - (i) no stormwater management facility may be constructed in a manner that allows drainage water collected on a roadway to flow directly into a naturally occurring waterbody, except with respect to bridges and approaches within 20 metres thereof;
 - (ii) runoff from roadways shall be controlled by using permeable paving or diverting runoff to ditches, grassed swales, dry wells, constructed wetlands, or dry ponds;
 - (iii) the construction of curbs and gutters is prohibited, except where a curb is required to control erosion;
- (j) all utility kiosks, garbage and recycling containers or dumpsters shall be located and stored in an enclosed area to the rear or side of a principal building and fully screened from view by a fence, wall or landscaping; and
- (k) upon the first sale of each parcel created on the Lands, the purchaser shall be provided with a comprehensive owner's manual, including guidelines for minimizing human-wildlife conflicts, decreasing fire hazard, and conserving energy and water.

Fire Smart and Sustainable Guidelines Supplement

- 3. The parties acknowledge that the Grantor is intended to be primarily responsible for enforcement of clause 1.1(d) through the provisions of a statutory building scheme, and this covenant is intended to secure those obligations in the public interest: therefore, the Grantor covenants and agrees:
 - (a) not to amend any Statutory Building Scheme registered against title to the Lands, as those schemes relate to this Agreement, without the prior written consent of the Grantee; and
 - (b) when it submits an application for a building permit, to include with that application, for information purposes, the written information, plans and drawings provided to and the analysis and response given by the Approving Agent under the Statutory Building Scheme to the proposed construction that is the subject of the building permit application.
- 4. For certainty, the Grantor and Grantee agree that:
 - (a) the provisions of the Guidelines of clause 1.1(d) that refer to clearance of vegetation for "Fire smart" reasons do not apply to Riparian Areas, as defined in Covenant registered on the title to the Lands under BB1225301;

- (b) the expiry of the statutory building scheme does not preclude continued application of the Guidelines and enforcement under this Agreement.

No Blocking of Certain Roads and Access Routes

- 5. The Grantee covenants and agrees that the roads and common property access routes on the Lands identified in Statutory Right of Way registered on the title to the Lands under BB1225298 shall not be blocked with gates, bollards or any other type of obstruction, natural or man-made, and shall at all times remain accessible to and passable by members of the public.

Geotechnical Matters

- 6. The Grantor acknowledges that the portions of the Lands described on the plan attached as Appendix B to this Covenant entitled "Geotechnical and Flood Hazard" dated September 2007 may be subject to hazards, as identified in the Trow Associates Inc. reports dated December 2004 updated September 12, 2007, and the Grantor therefore covenants and agrees that a property owner may not build upon any portion of the Lands so identified until the property owner:
 - (a) has provided the Grantee's building official with a report certified by a qualified professional that the land may be safely used for the intended use; and
 - (b) enters into a covenant under section 56(5) of the *Community Charter* or successor legislation, if so required under that section.

No Effect On Laws or Powers

- 7. This Agreement does not:
 - (a) affect or limit the discretion, rights, duties or powers of the Grantee under any enactment or at common law, including in relation to the use or subdivision of the Lands, all of which may be fully and effectively exercised in relation to the Lands as if this Agreement had not been executed and delivered by the Grantor;
 - (b) impose on the Grantee any legal duty or obligation, including any duty of care or contractual or other legal duty or obligation, to enforce this Agreement or the breach of any provision in this Agreement;
 - (c) affect or limit any enactment relating to the use or subdivision of the Lands;
 - (d) relieve the Grantor from complying with any enactment, including in relation to the use or subdivision of the Lands; and

- (e) impose any public law duty, whether arising from the principles of procedural fairness or the rules of natural justice, on the Grantee with respect to its exercise of any right or remedy expressly provided in this Agreement or at law or in equity.

Limitation on Grantor's Obligations & Withholding of Approvals

- 8. The Grantor is only liable for breaches of this Agreement that occur while the Grantor is registered owner of the Lands. If, following subdivision of the Lands, an owner or occupier of one parcel breaches this Agreement, that violation will not impact the owner or occupier of another parcel's ability to build on another parcel. However, the owner or occupier of each parcel acknowledges and agrees that if this Agreement has been breached with respect to its own parcel or by that owner or occupier, the Grantee may withhold building permits or occupancy certificates for that owner or occupier's parcel until such breach is remedied to the reasonable satisfaction of the Grantee. Further, if this Agreement has been breached with respect to the common area shown on a strata plan registered in respect of the Lands, the Grantee may withhold building permits or occupancy certificates for that common property until such breach is remedied to the reasonable satisfaction of the Grantee, provided however that such withholding does not authorize the withholding of any building permit or occupancy certificate for a strata lot.

No Liability in Tort

- 9. The parties agree that this Agreement creates only contractual obligations and obligations arising out of the nature of this document as a deed. The parties agree that no tort obligations or liabilities of any kind exist between the parties in connection with the performance of or any default under or in respect of, this Agreement. The intent of this section is to exclude tort liability of any kind and to limit the parties to their rights and remedies under the law of contract and the law pertaining to deeds under seal.

Covenant Runs With the Lands

- 10. Unless it is otherwise expressly provided in this Agreement, every obligation and covenant of the Grantor in this Agreement constitutes a personal covenant and also a covenant granted under section 219 of the *Land Title Act* (British Columbia) in respect of the Lands. This Agreement burdens the Lands and runs with it and binds the successors in title to the Lands. This Agreement burdens and charges all of the Lands and any parcel into which it is subdivided by any means and any parcel into which the Lands are consolidated by any means.

Further Acts

11. The Grantor must do everything reasonably necessary to give affect to the intent of this Agreement, including execution of further instruments. Without limiting the generality of the foregoing, the Grantor agrees to do everything necessary at the Grantor's expense to ensure that this Agreement is registered against title to the Lands with priority over all financial charges, liens and encumbrances registered or pending registration in the Land Title Office at the time of application for registration of this Agreement. The Grantee will. following the registration of the Nature Conservation and Utility Area Section 219 Covenant against title to the Lands and a subdivision that creates a separate title for the Covenant Area referred to in the Nature Conservation and Utility Area Section 219 Covenant, execute a registrable discharge of this Development Lands Section 219 Covenant from the portion of the Lands west of Highway 99.

Indemnity and Release

12. The Grantor shall indemnify and keep indemnified the Grantee from any and all claims, causes of action, suits, demands, fines, penalties, costs, deprivation, expenses or legal fees whatsoever, whether based in law or equity, whether known or unknown, which anyone has or may have against the Grantee or which the Grantee incurs as a result of any loss, damage or injury, including economic loss or deprivation, arising out of or connected with this Agreement, including the restrictions and requirements of this Agreement (including without limiting the foregoing, the restrictions on subdivision, development, building and use and building and maintenance obligations) or any breach by the Grantor of any covenant in this Agreement.
13. The Grantor hereby releases, saves harmless and forever discharges the Grantee of and from any claim, causes of action, suits, demands, fines, penalties, costs, deprivation, expenses or legal fees whatsoever which the Grantor can or may have against the Grantee, whether based in law or equity, whether known or unknown, for any loss, damage, or injury, including economic loss or deprivation, that the Grantor may sustain or suffer arising out of or connected with this Agreement, including the restrictions and requirements of this Agreement (including without limiting the foregoing, the restrictions on subdivision, development, building and use and building and maintenance obligations) or any breach by the Grantor of any covenant in this Agreement.

Waiver

14. An alleged waiver of any breach of this Agreement is effective only if it is an express waiver in writing of the breach. A waiver of a breach of this Agreement does not operate as a waiver of any other breach of this Agreement.

Severance

15. If any part of this Agreement is held to be invalid, illegal or unenforceable by a court having the jurisdiction to do so, that part is to be considered to have been

severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that holding or by the severance of that part.

No Other Agreements

16. This Agreement is the entire agreement between the parties regarding its subject. It is mutually understood, acknowledged and agreed by the parties hereto that the Grantee has made no representations, covenants, warranties, guarantees, promises or agreements (oral or otherwise) with the Grantor other than those contained in this Agreement.

Binding of Successors

17. Any reference in this Agreement to the Grantee is a reference also to its elected and appointed officials, officers and employees with respect to rights granted herein.
18. This Agreement binds the parties to it and their respective assigns, successors, heirs, executors and administrators.
19. If the jurisdictional boundary of the Resort Municipality of Whistler expands to include the Lands, any reference in this Agreement to the Grantee shall be deemed to mean the Resort Municipality of Whistler.

Amendment

20. This Agreement may be discharged, amended, terminated or otherwise affected only by an instrument duly executed by all parties to this Agreement.

Deed and Contract

21. By executing and delivering this Agreement each of the parties intends to create both a contract and a deed executed and delivered under seal.

Execution Using Forms C and D

22. As evidence of their agreement to be bound by the above terms, the parties each have executed and delivered this Agreement under seal by executing Part I of the *Land Title Act* Forms C and D to which this Agreement is attached and which form part of this Agreement.

APPENDIX A - FIRE SMART AND SUSTAINABLE DESIGN GUIDELINES

Sustainable Design Guidelines

1. Natural vegetation shall not be removed except where required by section 4 (the Fire Smart Guidelines) or for construction that is authorized by the Squamish-Lillooet Regional District Electoral Area C Zoning Bylaw No. 765, 2002, as amended.
2. Despite section 4, all vegetation shall be retained within riparian areas, which are defined as those lands within thirty meters from the high water mark of the Green River and Wedgemount Creek and fifteen meters from the high water mark of the unnamed tributaries A & B, except where required for trails and roads described in Squamish Lillooet Regional District Electoral Area C Zoning Bylaw No. 765, 2002, as amended.
3. The construction of a fence is required, to delineate the outer boundary of the riparian areas that extends 30 meters from the natural boundary of each of the Green River and Wedgemount Creek, and 15 meters from the natural boundary of each of the two ephemeral tributaries marked on the Green River Estates Site Layout, except where:
 - (a) there is a railway track or trail either along the outer boundary of the riparian area, or between the outer boundary of the riparian area and the water;
 - (b) there is an embankment of 45° or more that is ten meters or more in height either along the outer boundary of the riparian area, or between the outer boundary of the riparian area and the water; or
 - (c) the land immediately adjacent to the riparian area remains in its natural state.

For greater certainty, the land immediately adjacent to the riparian area is not in its natural state if it has been modified under the section 4 of the Fire Smart Guidelines.

Fire Smart Guidelines

4. Outside of riparian areas, the development of lands may only occur in a manner that creates two separate zones surrounding any buildings or improvements as follows:
 - (a) Zone One - the first ten metres surrounding any building shall be a fuel reduced buffer by:
 - (i) utilizing deciduous shrubs, lawn, or hard surface such as concrete or stone; or other less combustible landscape materials;

- (ii) removing any accumulation (15 cm or more) of woody debris, needles, or leaves, and other combustible materials such as wood piles;
 - (iii) removing mature conifer trees, or, where retained conifer trees shall be thinned to at least three metres between crowns (tips of branches of adjacent trees); with no limbs within three metres of buildings, including balconies, decks, eaves or projections;
- (b) Zone Two - the area from ten metres out to thirty metres from any building wall will allow for retention of natural vegetation provided that ground fuels are removed, and clusters of trees shall be permitted if a hard surface, lawn, area of low vegetation (one meter high or less), or other suitable fire break surrounds those clusters.
5. Roofing shall conform to Class A, B, or C fire resistance rating as defined in the BC Building Code.
 6. Siding materials shall make extensive use (70% of total exterior surface area) of fire resistant materials such as stucco and other cement-based products, metal siding, brick, or heavy timber and minimize the use of wood siding products.
 7. Fire places, wood stoves and furnaces shall be installed with spark arrestors.
 8. Eaves, attics, vents and underfloor openings shall be screened to prevent the accumulation of combustible materials and the entry of burning embers.
 9. Windows and glazing shall be double paned or tempered.

Stormwater Management

10. Rain gardens, swales, or ponds shall be constructed to retain stormwater runoff on the parcel to the same extent as the preconstruction runoff retention conditions of the parcel.

Site and Landscaping

11. Existing topsoil shall be collected, stored and reused on site.
12. Circular driveways are prohibited.
13. Those portions of the parcel where trees and vegetation are to be retained shall be protected with temporary fencing or flagging during site preparation, excavation and construction.
14. Only drought tolerant, pest resistant, or native vegetation, as certified by the consulting landscape architect may be used in landscaping.
15. All outdoor lighting fixtures and standards shall be designed and installed to minimize extraneous light propagation ("light pollution").

16. All landscaped areas shall include a mulch layer.

Energy Efficiency

17. All developments will achieve an EnerGuide rating of 80 or meet the R-2000 certification standard.
18. All gas fireplaces shall be equipped with electronic ignition only and solid fuel devices shall be CSA or EPA compliant.
19. Only Energy Star certified products shall be employed for furnaces, boiler equipment, and domestic hot water heating.
20. Hot tubs shall include two or more energy saving features, such as: an insulated cover; a layered shell for increased insulation; automatic shut off of jets, pumps and lights; an ozone water cleaning system; a warm air induction system; and low-wattage pumps.
21. Where a central air conditioning system is installed, the system shall include two or more energy saving features, such as: large coils for more efficient heat transfer; variable speed blower and fan motors; multiple compressors; programmable thermostats; a filter maintenance indicator light; and dynamic occupancy detectors.
22. Lighting fixtures shall be installed with Energy Star qualified compact florescent light bulbs or other energy efficient lamps for at least 70% of all lighting fixtures installed.

Water Conservation

23. Only Energy Star certified products will be used for water-consuming appliances and shower-heads.
24. Where an irrigation system is installed the system shall include two or more energy saving features, such as: automatic valves to control the flow of water to different areas of landscaping; a controller with multiple independent programs; rain shut-off device; diagnostic circuitry to notify the homeowner when the station is shorted or a power failure has occurred; battery back-up; drip or bubbler irrigation; and low flow- sprinkler heads.
25. Only dual flush toilets with a maximum volume of six litres per flush may be installed.

Indoor Environment

26. Seventy-five percent of all paints and adhesives shall meet low or zero VOC standards.
27. Seventy-five percent of all floor coverings and interior panel products shall be made of linoleum, ceramic, cork, rubber, hardwood flooring, stone, woven wool

or woven plant fibre carpets, wood products manufactured with low formaldehyde emission adhesives, drywall, or other low emission materials.

28. All air filters for ventilation supply air and furnaces shall achieve a minimum MERV 4 filtration standard.

Waste Management

29. In every new dwelling provision will be made for a 2 m² space for collecting and separating recyclable household waste.

30. In-sink garbage disposal units are not permitted in a dwelling.

Optional Features

31. Protection of plants and wildlife:

- (a) restoring native flora to an area equivalent to the building footprint, on or off-site;
- (b) installing vegetated (“green”) roof areas.

32. Energy efficiency:

- (a) designing buildings to optimize passive solar heating through means such as building orientation and form, window design and use of thermal mass;
- (b) designing buildings to induce airflow for ventilation and cooling by making use of building orientation, layout, and opening design;
- (c) installing solar energy devices, or designating a roof and wall area for solar energy devices and installing conduit and pipe connections;
- (d) using high performance heat pump technology for space and water heating;
- (e) installing controls for a continuous ventilation system that is capable of responding to occupancy;
- (f) installing a grey water heat recovery unit in drains;
- (g) installing motion detectors on outdoor lights;
- (h) not installing a stand-alone air conditioning system;
- (i) reducing a buildings energy demand by decreasing the total floor area;
- (j) constructing an enclosed foyer that separates the main interior space of the building from exterior doors.

33. Water conservation:

- (a) installing a system for collection, storage, and reuse of precipitation for a purpose such as irrigation;
- (b) installing a grey water reuse system, or a system to separate the toilet and kitchen drains from all other drains to the point of exit for incorporation in a future grey water reuse system;
- (c) installing water meters in a location that facilitates water consumption awareness by occupants;
- (d) not installing an irrigation system;
- (e) installing a composting toilet.

34. Indoor environment:

- (a) installing energy and heat recovery ventilators with supply ducted to all occupied rooms and exhaust from all wet rooms;
- (b) installing air filters for ventilation supply air and furnaces with a minimum MERV 6 filtration standard;
- (c) installing hard surface or resilient floor coverings;
- (d) isolating attached garages from dwellings with a fan depressurization system;
- (e) installing a carbon monoxide alarm.

35. Materials:

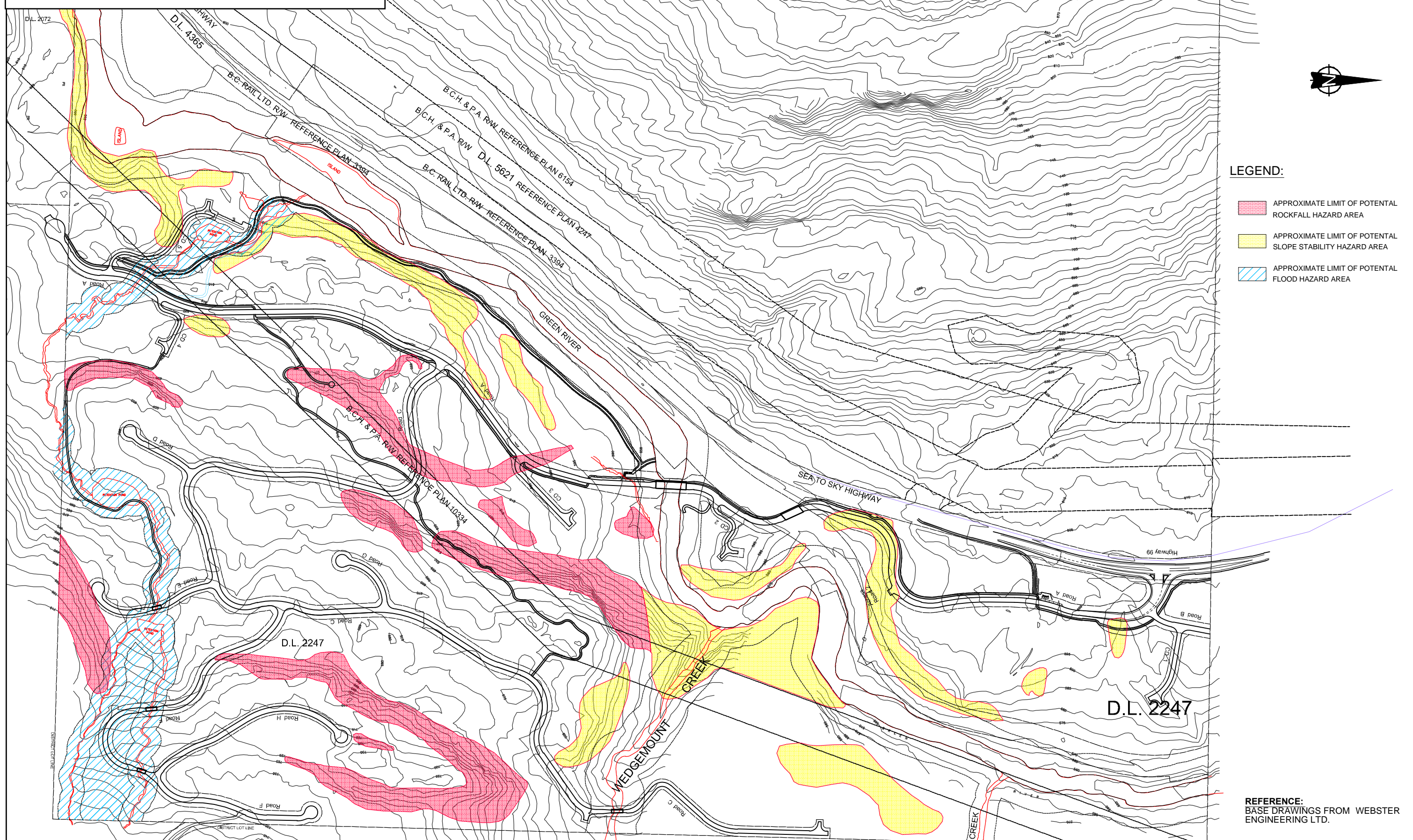
- (a) using salvaged materials for structural or finishing element;
- (b) using materials that meet recycled content standards;
- (c) using material made from plant fibre with less than a ten year rotation, such as straw or bamboo;
- (d) using materials or systems produced in BC;
- (e) applying CMHC's Flex Housing or Convertible Housing concepts to housing design to produce homes that are adaptable, expandable and accessible;
- (f) using wood certified by the Forest Stewardship Council;
- (g) reducing materials used by decreasing the total floor area.

36. Waste management:

- (a) where a cooling system or heat pump is employed, using only refrigerants that are chlorine free with zero ozone depletion potential;
- (b) providing a bear-proof household composting system sized for each dwelling.

DRAFT

Appendix B: Geotechnical and Flood Hazard



LEGEND:

- APPROXIMATE LIMIT OF POTENTIAL ROCKFALL HAZARD AREA
- APPROXIMATE LIMIT OF POTENTIAL SLOPE STABILITY HAZARD AREA
- APPROXIMATE LIMIT OF POTENTIAL FLOOD HAZARD AREA

REFERENCE:
BASE DRAWINGS FROM WEBSTER ENGINEERING LTD.



exp Services Inc.
275-3001 Wayburne Drive
Burnaby, British Columbia V5G 4W3
Telephone: 604-874-1245
Fax: 604-874-2358
exp.com

DFT.	PDL	REVISIONS		
		No.	DESCRIPTION	DATE
DSGN.	EGS	1	REMOVED LOT LINES	2015-11-05
CHK.	BW			

CLIENT: 28165 YUKON INC.
PROJECT: GREEN RIVER ESTATES
SQUAMISH-LILLOOET REGIONAL DISTRICT
PROJECT NO.: 041-01401

TITLE: SUBDIVISION PLAN with
GEOTECHNICAL AND FLOOD HAZARD
DATE: SEPT., 2007
SCALE: 1:5000
DWG NO.: 041-01401-HAZ-01R1

Consent and Priority Agreement

For \$1.00 and other good and valuable consideration, MOUNTAIN ADVENTURE LTD., the registered holder of the following financial charges registered in the Vancouver/New Westminster Land Title Office:

Mortgage BB1186415
Assignment of Rents BB1186416

("Security")

against title to the Lands charged by the within charges, for themselves and their successors and assigns, hereby consent to the granting and registration of the within charges and grants priority to the within charges over the Security and their rights, title and interest in and to the Lands charged by the within charge in the same manner and to the same effect as if the within charges had been executed, delivered and registered prior to the execution, delivery and registration of the Security and prior to the advance of any money under the Security.

As evidence of its agreement to be bound by the terms of this instrument, the Prior Chargee has executed the Land Title Form C which is attached hereto and forms part of this Agreement.

END OF DOCUMENT