

LAND TITLE ACT
FORM C (Section 233) CHARGE
GENERAL INSTRUMENT - PART 1 Province of British Columbia

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Your electronic signature is a representation that you are a subscriber as defined by the Land Title Act, RSBC 1996 c.250, and that you have applied your electronic signature in accordance with Section 168.3, and a true copy, or a copy of that true copy, is in your possession.



1. APPLICATION: (Name, address, phone number of applicant, applicant's solicitor or agent)

PUSHOR MITCHELL LLP, Lawyers
301 - 1665 Ellis Street

Phone 250-762-2108

Client No. 10332

BCC/57696.1-mlw (City SRW - Lot 3 Remainder)

Kelowna

BC V1Y 2B3

Deduct LTSA Fees? Yes ☒

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:
 [PID] [LEGAL DESCRIPTION]

026-686-660

**LOT 3 SECTION 31 TOWNSHIP 27 ODYD PLAN KAP80993 EXCEPT STRATA
 PLAN EPS2195 (PHASE 1)**

STC? YES ☐

3. NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

SEE SCHEDULE

4. TERMS: Part 2 of this instrument consists of (select one only)

(a) ☐ Filed Standard Charge Terms D.F. No.(b) ☒ Express Charge Terms Annexed as Part 2

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument.

5. TRANSFEROR(S):

PARKBRIDGE LIFESTYLE COMMUNITIES INC. (INC. NO. A0083070)

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

CITY OF KELOWNA**A MUNICIPAL CORPORATION INCORPORATED UNDER THE LOCAL GOVERNMENT ACT****1435 WATER STREET****KELOWNA****BRITISH COLUMBIA****V1Y 1J4****CANADA**

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)

Stacy Paquin
Lawyer/Notary Public of Alberta
Parkbridge Lifestyle Communities Inc.
1500 500 4th Ave. SW, Calgary AB T2P 2V6
T: 403 215 2121

Execution Date

Y	M	D
15	05	01

Transferor(s) Signature(s)

**PARKBRIDGE LIFESTYLE
 COMMUNITIES INC., by its
 authorized signatory(ies)**

Print Name: **WILLIAM A. HIGGINS**Print Name: **KARL GAGESH**

AS TO BOTH SIGNATURES IF MORE THAN ONE
 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.

**LAND TITLE ACT
FORM D**
EXECUTIONS CONTINUED

PAGE 2 of 20 pages

Officer Signature(s)

Execution Date

Transferor / Borrower / Party Signature(s)

Y

M

D

2005 05 29

This is an instrument required by the
Approving Officer for Strata Plan
EPS2195 creating the condition or
Statutory Right of Way entered into
under Section 218 of the Land Title Act



Shelley Gambacort, Approving Officer
City of Kelowna

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.

**LAND TITLE ACT
FORM E****SCHEDULE**

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NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

Covenant

Article 2

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

Statutory Right of Way

Paragraph 3.1

Over Parcels 3, 4, 5 and 7 on Plan EPP48973

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

Statutory Right of Way

Paragraph 3.2

Over Parcels 1, 2 and 6 on Plan EPP48973

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

CITY FORM C PEDESTRIAN TRAILS AND ROAD (LOT 3 REMAINDER)

TERMS OF INSTRUMENT – PART 2

THIS AGREEMENT made the _____ day of _____, 2015.

AMONG:

PARKBRIDGE LIFESTYLE COMMUNITIES INC., 1500, 500 – 4th Avenue SW,
Calgary, Alberta, V2P 2V6

(hereinafter called the “Transferor”)

AND:

CITY OF KELOWNA, 1435 Water Street, Kelowna, British Columbia, V1Y 1J4

(hereinafter called the “City”)

WHEREAS:

1. The Transferor is the registered owner in fee simple of lands identified in Form C, Part 1, Item 2 (the “Lands”);
2. Section 218 of the Land Title Act, R.S.B.C. 1996, c. 250 enables the Transferor to grant in favour of the City a statutory right of way;
3. The Transferor has agreed to construct and maintain an access route over a portion of the Lands;
4. The Transferor has agreed to grant to the City a statutory right of way for the purposes of operating an access route over a portion of the Lands; and
5. This statutory right of way is necessary for the operation of the City’s undertaking to have and maintain public access in this area.
6. Section 219 of the *Land Title Act* authorizes the City to be granted a covenant, whether of a positive or negative nature, respecting the use of land or the use of a building on land or that land is to be built on or is not to be built on except in accordance with the covenant.
7. In recognition of the importance in providing the Pedestrian Walkway the Transferor agrees to grant the Section 219 Covenant contained herein.

NOW THEREFORE in consideration of the premises and the sum of One Dollar (\$1.00) paid by the City to the Transferor, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the parties agree as follows:

ARTICLE 1

DEFINITIONS

1.1 Definitions. Terms defined in this Section 1.1, unless specifically otherwise provided in this agreement, will have the following meanings for all purposes of this agreement:

- (a) "Development Permit" means development permit number DP14-0031;
- (b) "Internal Roads and Lanes" means as series of internal roads and lanes to be constructed on the Lands and identified in Plan EPP48973 as Parcels 3,4, 5 and 7;
- (c) "Lands" means that parcel of land located in Kelowna, British Columbia, and legally described in Section 2 of the Form C – General Instrument, Part 1;
- (d) "Transferor's Works" means all structures, improvements, walkways, paved areas, landscaping, surfacing, retaining walls, lighting, seating, furniture, litter containers and other works to the extent necessary for lighting, drainage and irrigation, and all related elements and amenities to be installed or constructed by the Transferor in the Pedestrian Walkway as required pursuant to the Development Permit, to the satisfaction of the City and all replacements, modifications and substitutions therefore that have received the prior written approval of the City;
- (e) "Pedestrian Walkway" means a series of trail corridors to be constructed in accordance with this mutual agreement between the Transferor and the City to fit the terrain and topography of the Lands and identified in Plan EPP48973 as Parcels 1, 2 and 6;
- (f) "Road Statutory Right of Way Area" means the Internal Roads and Lanes constructed on the Lands, the location and area of which are outlined in heavy black and identified as Parcels 3, 4, 5 and 7 on the reference or explanatory plan of statutory right-of-way in respect of Lot 3, Section 31, Township 27, ODYD, Plan KAP80993, Except Strata Plan EPS2195 (Phase 1) and registered in the Land title Office in Kamloops, British Columbia under number EPP48973.
- (g) "Walkway Statutory Right of Way Area" means the Pedestrian Walkway constructed on the Lands, the location and area of which are outlined in heavy black and identified as Parcels 1, 2 and 6 on the reference or explanatory plan of statutory right-of-way in respect of Lot 3, Section 31, Township 27, ODYD, Plan KAP80993, Except Strata Plan EPS2195 (Phase 1) and registered in the Land title Office in Kamloops, British Columbia under number EPP48973.

ARTICLE 2

DESIGN, CONSTRUCTION, INSTALLATION AND MAINTENANCE OF THE WALKWAY STATUTORY RIGHT OF WAY AREA

2.1 Section 219 Covenant. Pursuant to Section 219 of the *Land Title Act* of British Columbia, the Transferor covenants with the City that it will, at the Transferor's expense, and to the satisfaction of the City, construct the Pedestrian Walkway.

- 2.2 **Inspection of Transferor's Works.** The Transferor covenants and agrees to allow the City to inspect the Transferor's Works from time to time, as is reasonably necessary to confirm that the Transferor's Works are being carried out according to the requirements of this Agreement and in such manner as the City deems necessary or desirable.
- 2.3 **Construction and Maintenance.** The Transferor covenants and agrees that the construction of the improvements, and ongoing maintenance, will conform with a Pedestrian Trail Network Construction, Maintenance and Operations Agreement substantially in the form attached as Schedule "A" to this agreement.
- 2.4 **Other Sections Form Part of this Covenant.** The Transferor covenants and agrees that Sections 3.6 and 4.1 to 4.4 inclusive of this agreement will be deemed to be included in and form part of this covenant made pursuant to Section 219 of the Land Title Act.

ARTICLE 3 STATUTORY RIGHT OF WAY

- 3.1 **Grant of Road Statutory Right of Way.** Pursuant to Section 218 of the Land Title Act of British Columbia, the Transferor grants to the City, its servants, agents, workmen, contractors, licensees, including the general public the right, liberty, easement and statutory right of way at all times hereafter at its will and pleasure to permit all members of the public at their will and pleasure to pass and repass along and across the Road Statutory Right of Way Area by foot, bicycle, and other means of conveyance, including motor vehicles.
- 3.2 **Grant of Walkway Statutory Right of Way.** Pursuant to Section 218 of the Land Title Act of British Columbia, the Transferor grants to the City, its servants, agents, workmen, contractors, licensees, including the general public the right, liberty, easement and statutory right of way at all times hereafter at its will and pleasure to permit all members of the public at their will and pleasure to pass and repass along and across the Walkway Statutory Right of Way Area by foot, bicycle, and other non-motorized means of conveyance (except wheelchairs).
- 3.3 **Right of Public Access.** The City will only give permission to the public to pass, be on and repass on the portion of the Walkway Statutory Right of Way Area comprising the Pedestrian Walkway identified as Parcels 1, 2, and 6 on Plan EPP46472, during the hours from 6:00 AM to 11:00 PM daily
- 3.4 **Effective Date for Access to Road Statutory Right of Way Area:** Access to the Road Statutory Right of Way Area shall be restricted and the Road Statutory Right of Way shall not be effective until the earlier of the date upon which the Internal Road and Lanes are constructed or September 30, 2020. Upon such date, the Road Statutory Right of Way Area shall be full, free and uninterrupted access at all times, by day or by night, and no gates shall be installed on the Internal Roads and Lanes. Notwithstanding the effective date of access to the Road Statutory Right of Way Area, the Transferor shall be entitled to restrict access over the Road Statutory Right of Way Area during such time as the Transferor is constructing the road and installing utilities within the Road Statutory Right of Way

- 3.5 Effective date for Access to Walkway Statutory Right of Way Area: Access to the Walkway Statutory Right of Way Area shall be restricted and the Walkway Statutory right of Way shall not be effective until the earlier of the date upon which the Transferor's Works are installed on the Lands or September 30, 2020. If the Transferor fails to construct the Pedestrian Walkway or install the Transferor's Works by September 30, 2020, the City may, in its sole discretion, elect to construct or install the Transfer's Works and/or the Pedestrian Walkway. The rights herein granted to the City do not constitute obligations owing by the City.
- 3.6 Transferor's Responsibilities on Completion. Following completion of the construction and installation of the Transferor's Works, the Transferor will, at its expense, maintain the Transferor's Works and the Pedestrian Walkway, in the manner prescribed in this Agreement to the satisfaction of the City, acting reasonably, and pursuant to a Pedestrian Trail Network Construction, Maintenance and Operations Agreement substantially in the form attached as Schedule "A" to this agreement.
- 3.7 Interruption of Public Use by Transferor. The Transferor may temporarily interrupt the public use and enjoyment of the Pedestrian Walkway but only with the prior written consent of the City and only to the extent reasonably necessary for the Transferor to carry out maintenance, repair and replacement work which the Transferor is expressly permitted or required to carry out under this agreement.
- 3.8 SRW Not Interrupted by Default by City. No default by the City under this agreement and no act or failure to act by the City with the Pedestrian Walkway will result or be deemed to result in the interruption, suspension or termination of this Pedestrian Walkway, and the Transferor will refrain from seeking any judgment, order declaration or injunction to that effect.
- 3.9 Other Sections Form Part of Statutory Right of Way. The Transferor covenants and agrees with the City that Sections 4.1 to 4.4 inclusive of this agreement will be deemed to be included in and form part of this statutory right of way made pursuant to Section 218 of the Land Title Act.
- 3.10 Statutory Right of Way Necessary. This statutory right of way is necessary for the operation of the City's undertaking and public access.

ARTICLE 4 MISCELLANEOUS

- 4.1 Assignment by City. The City, upon prior written notice to the Transferor, may assign all or any part of this agreement to any governmental agency or to any corporation or entity charged with the responsibility for providing such public facilities and services as are contemplated by this agreement; and the City may designate licensees and permittees for any and all purposes of this agreement.
- 4.2 Agreement Runs with the Lands. This agreement will run with the Lands and will bind the Lands and will attach thereto and run with each and every part into which the same may be subdivided or consolidated whether by strata plan, subdivision plan or otherwise.

- 4.3 **Indemnities.** The Transferor covenants to and does hereby indemnify and save harmless the City, its elected officials, officers, and employees at all times from all losses, damages, actions, suits, claims, demands, costs, expenses, fees and liabilities of any nature whatsoever by whomsoever brought, made or suffered for which the City is or may become liable, incur or suffer by reason of any injury to person (including death) or loss or damage to property or economic loss arising directly or indirectly from any act, omission, negligence or default of the Transferor in connection with or in consequence of this Agreement, save and except to the extent caused by any act, omission, negligence or default of the City.

The City covenants to and does hereby indemnify and save harmless the Transferor from and against all liability for losses, costs, actions, causes of action, claims, demands, liabilities and expenses which the Transferor may suffer or incur due to:

- (i) any default by the City in observing or performing the City's obligations under this Agreement; or,
- (ii) use of the Right of Way area by members of the public, as public roads and sidewalks.

- 4.4 None of the covenants herein contained shall be personal or binding upon the Transferor, save and except during the Transferor's ownership of an interest in the Transferor's Lands.

- 4.5 **Interpretation.** The following provisions apply to this agreement:

- (a) the laws of British Columbia are to govern its interpretation and enforcement and each of the City and the Transferor accepts the jurisdiction of the courts of British Columbia, and agrees that the other may bring any action in those courts;
- (b) if a court finds any provision invalid, illegal, or unenforceable, and severs it from this agreement, the remaining provisions will remain in force and effect;
- (c) time will be of the essence, and if the City or the Transferor expressly or impliedly waives that requirement, the City or the Transferor may re-instate it by delivering notice to the other;
- (d) no amendment is to have any force or effect unless the City and the Transferor have signed it;
- (e) this agreement represents the entire agreement between the City and the Transferor regarding the matters set out herein, except for any conditions in any development permit the City has issued or will issue to the Transferor regarding the Lands, and supersedes all prior agreements, understandings, letters of intent, negotiations, or discussion about such matters;
- (f) any reference to a statute is to the statute and its regulations in force on the date the City signs Form C, and to subsequent amendments to or replacements of the statute or regulations.

As evidence of their agreement to be bound by the terms of this instrument, the parties each have executed and delivered this Agreement under seal by executing Part 1 of the Land Title Act Form C to which this Agreement is attached and which forms part of this Agreement.

1

SCHEDULE "A"

**PEDESTRIAN TRAIL NETWORK
CONSTRUCTION, MAINTENANCE & OPERATIONS AGREEMENT**

This Agreement dated for reference _____, 2015, is

BETWEEN:

(the "Owner")

AND:

CITY OF KELOWNA,
1435 Water Street,
Kelowna, British Columbia, V1Y 1J4

(the "City")

WHEREAS:

A. The Owner is developing land in the City of Kelowna legally described as:

(the "Land");

B. The Owner will be constructing, maintaining and operating pedestrian trails in accordance with Schedule "A" to this Agreement for the purposes of public access (the "Trail Network");

C. The Owner has voluntarily agreed to install, maintain and operate a system of works and services on the Trail Network on the terms and conditions set out in this Agreement;

THIS AGREEMENT is evidence that in consideration of \$1.00 paid by the City to the Owner and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the Owner, the City and the Owner covenant and agree as follows:

Construction & Maintenance of Works

1. The Owner covenants and agrees, at its sole cost and expense, to carry out and complete the installation, maintenance and operation of the works and services set out in Schedule "B" to this Agreement on the Trail Network (the "Works").
2. The Owner covenants and agrees, to operate and maintain the Trail Network and the Works, to:
 - (a) commence installation, operation and maintenance of the Works;

- (b) at the time of installation of the Works, the Owner shall assess the Trail Network for any hazardous trees, and shall remove any trees deemed hazardous at such time;
- (c) maintain and repair the Works and so they are safe for the passage of the public;
- (d) maintain vegetation near the trail as required to ensure that it does not impede safe passage of the public;
- (e) install hardware cloth around trees to prevent beaver damage;
- (f) provide adequate litter bins and clean up litter as required; litter bins shall be inspected at least daily from April to October and at least twice per week during the rest of the year;
- (g) remediate any vandalism within the Trail Network;
- (h) provide safety and security measures to ensure the Trail Network is safe for public access;
- (i) obtain, maintain and comply with all federal, provincial and local government permits and approvals required under applicable enactments, laws, statutes and regulations as may be necessary to perform the Works and any other obligations under this Agreement;
- (j) maintain hours of operation to the public of 6:00 AM to 11:00 PM daily for the Trail Network;
- (k) not install any gates on the Trail Network.

City Contribution for Works

- 3. The Owner acknowledges and agrees that the Owner has voluntarily agreed to perform the installation, operations and maintenance of the Works at its own cost and expense on the terms and conditions contained in this Agreement. Except as set out in this Agreement, the City has no obligation to install, maintain or operate the Works or to make a contribution to the Owner for the Owner's performance of the terms and conditions in this Agreement.
- 4. The City shall be responsible for the installation, maintenance and, repair of any signs, including signs along roadways and trails, to provide direction to the public to access Tower Ranch Mountain Park:

Owner's Risk

- 5. The Owner acknowledges and agrees that the City does not, by its approvals, inspections or acceptance of the Works warrant or represent that the Works are in compliance with any enactment or other law or as to the quality, fitness for purpose, adequacy or safety of the Works, or that the Works are without fault or defect, and the Owner acknowledges and agrees that all approvals and inspection of the Works given or made by the City are for the sole benefit of the City and in no way relieve the Owner from constructing and installing the Works in accordance with this Agreement.

Indemnity and Hold Harmless

6. The Owner shall:

- (a) defend, indemnify and hold harmless the City, its elected officials, officers, employees and agents from and against all claims, demands, actions, proceedings, and liabilities whatsoever and all costs and expenses incurred in connection therewith and resulting from the performance, purported performance, or non-performance of the obligations of the Owner pursuant to this Agreement;
- (b) be liable for all loss, costs, damages, and expenses whatsoever incurred or suffered by the City, its elected officials, officers, employees and agents including but not limited to damage to or loss of property and loss of use thereof, and injury to or death of a person or persons resulting from or in connection with the performance, purported performance, or non-performance of the obligations of the Owner pursuant to this Agreement;
- (c) indemnify and hold harmless the City, its elected officials, officers, employees and agents from and against all expenses that may be incurred by reason of liens, non-payment for labour or materials, federal or provincial taxes, workers' compensation assessments, employment insurance or union dues resulting from the Owner's obligations pursuant to this Agreement

This indemnity will survive the termination of this Agreement in relation to any matter arising out of or caused by any action taken or not taken before the end of the Term.

7. The City shall:

- (a) defend, indemnify and hold harmless the Owner, its directors, officers, employees and agents from and against all claims, demands, actions, proceedings, and liabilities whatsoever and all costs and expenses incurred in connection therewith and resulting from the performance, purported performance, or non-performance of the obligations of the City pursuant to this Agreement;
- (b) be liable for all loss, costs, damages, and expenses whatsoever incurred or suffered by the Owner, its directors, officers, employees and agents including but not limited to damage to or loss of property and loss of use thereof, and injury to or death of a person or persons resulting from or in connection with the performance, purported performance, or non-performance of the obligations of the City pursuant to this Agreement;
- (c) indemnify and hold harmless the Owner, its directors, officers, employees and agents from and against all expenses that may be incurred by reason of liens, non-payment for labour or materials, federal or provincial taxes, workers' compensation assessments, employment insurance or union dues resulting from the City's obligations pursuant to this Agreement.

This indemnity will survive the termination of this Agreement in relation to any matter arising out of or caused by any action taken or not taken before the end of this Agreement.

Owner To Provide

- 8. The Owner shall procure and maintain, at its own expense and cost, the insurance policies listed in the following section of this agreement, with limits no less than those shown in the respective items, unless in connection with the performance of some particular part of this Agreement the City advises in writing that it has determined that

the exposure to liability justifies less limits. The insurance policy or policies shall be maintained continuously from commencement of this Agreement.

Insurance

9. As a minimum, the Owner shall, without limiting its obligations or liabilities under any other contract with the City, procure and maintain, at its own expense and cost, the following insurance policies:
 - (a) Workers' Compensation Insurance covering all employees of the Owner engaged in this Agreement, in accordance with the statutory requirements of the province or territory having jurisdiction over such employees;
 - (b) Comprehensive General Liability Insurance:
 - i. providing for an inclusive limit of not less than \$5,000,000.00 for each occurrence or accident;
 - ii. providing for all sums which the Owner shall become legally obligated to pay for damages because of bodily injury (including death at any time resulting therefrom) sustained by any person or persons or because of damage to or destruction of property caused by an occurrence or accident arising out of or related to this Agreement, or any operations carried on in connection with this Agreement;
 - iii. including coverage for Products/Completed Operations, Blanket Contractual, Contractor's Protective, Personal Injury, Contingent Employer's Liability, Broad Form Property Damage, and Non-Owned Automobile Liability; and,
 - iv. including a Cross Liability clause providing that the inclusion of more than one insured party shall not in any way affect the rights of any other insured party hereunder, in respect to any claim, demand, suit or judgement made against any of the insured parties.
 - (c) Automobile Liability Insurance covering all motor vehicles, owned, operated and used or to be used by the Owner directly or indirectly in the performance of this Agreement. The limit of liability shall not be less than \$2,000,000 inclusive, for loss or damage including personal injuries and death resulting from any one accident or occurrence.
10. The policies required by Section 9 above shall provide that the City is named as an additional insured party thereunder and that said policies are primary without any right of contribution from any insurance otherwise maintained by the City.
11. The Owner shall require each of its sub-contractors to provide comparable insurance to that set forth under Section 9 of this Agreement.
12. The Owner agrees to submit a policy of insurance (the "Certificate") for itself and all of its sub-contractors to the City prior to the commencement of any Works relating to this Agreement. Such Certificate shall provide that 30 days' written notice shall be given to the City, prior to any material changes or cancellations of any such policy or policies.

13. After reviewing the Owner's Certificate, the City may require other insurance or alterations to any applicable insurance policies in force during the period of this contract and will give notifications of such requirement. Where other insurances or alterations to any insurance policies in force are required by the City and result in increased insurance premium, such increased premium shall be at the Owner's expense.
14. The Owner may take out such additional insurance, as it may consider necessary and desirable. All such additional insurance shall be at no expense to the City. The Owner shall ensure that all of its sub-contractors are informed of and comply with the City's requirements set out in this Agreement.
15. All insurance, which the Owner is required to obtain with respect to this Agreement, shall be with insurance companies registered in and licensed to underwrite such insurance in the Province of British Columbia.
16. If the Owner fails to do all or anything which is required of it with regard to insurance, the City may do all that is necessary to effect and maintain such insurance, and any monies expended by the City shall be repayable by and recovered from the Owner.
17. The failure or refusal to pay losses by any insurance company providing insurance on behalf of the Owner or any sub-contractor shall not be held to waive or release the Owner or sub-contractor from any of the provisions of the insurance requirements of this Agreement with respect to the liability of the Owner. Any insurance deductible maintained by the Owner or any sub-contractor under any of the insurance policies is solely for their account and any such amount incurred by the City will be recovered from the Owner as stated in Section 16 of this Agreement.

Assignment

18. Subject to Section 19 of this Agreement, the Owner must not assign its rights under this Agreement without the prior written consent of the City.
19. The Owner intends to develop a series of strata projects on a portion of the Land. The City agrees that the Owner can arrange for one or more of the strata corporations to assume a portion of the cost relating to the maintenance and operation of the Trail Network and the Works, provided the Owner continues to have the primary obligation over the maintenance and operation of the Trail Network and Works. If the Owner sells its entire interest in the Land, the City agrees that the Owner may assign this Agreement to a Strata Corporation on the condition that such party assumes the obligations of the Owner under this Agreement. If the Owner assigns this Agreement as set out above, it shall not have any further obligations under the Agreement.

General

20. This Agreement will bind and benefit each party to this Agreement, and its respective successors, administrators, employees, agents, and contractors.
21. If any portion of this Agreement is held invalid by a court of competent jurisdiction, the invalid portion shall be severed and a decision that it is invalid shall not affect the validity of the remainder of this Agreement.
22. This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia.

24. Time is of the essence of this Agreement.

CITY OF KELOWNA by its authorized signatories:

C/S

Date _____

by its authorized signatories:

C/S

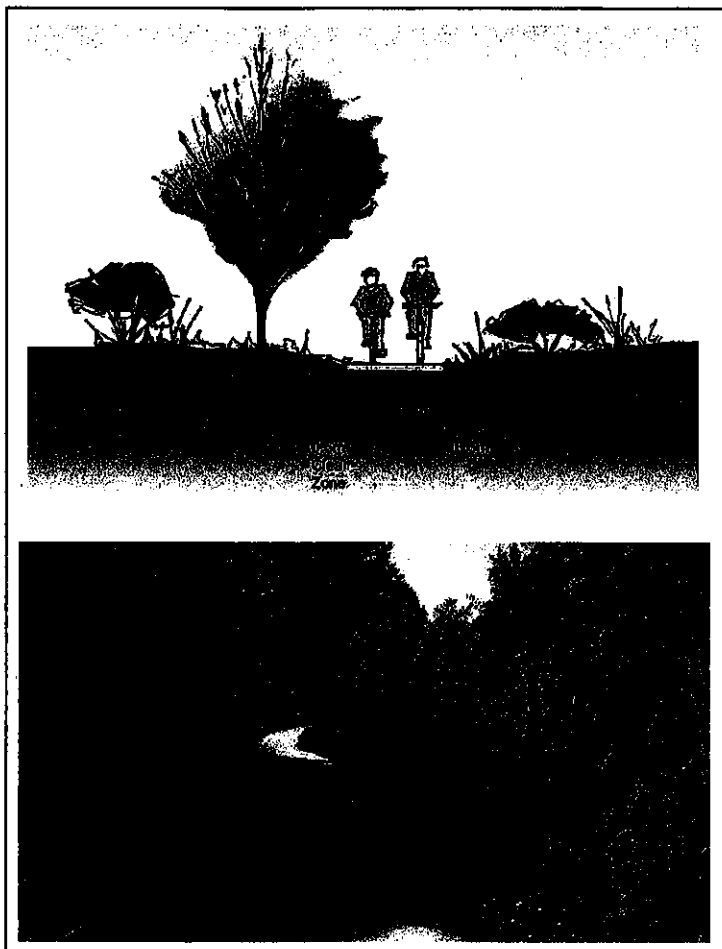
Name: _____

Date:

SCHEDULE "A"
LOCATION AND CONSTRUCTION OF TRAIL NETWORK

Class 5: Narrow Multi-use

Context: Connections to major routes
Level of Use: Low - Moderate
Type of Use: Walking, jogging, mountain biking, equestrian
Location: Parks, creek corridors, natural areas, ponds, irrigation flumes; locations with space limitations



Design Guidelines

Surface: Aggregate, hard surfaced
Trail Base: Granular base
Longitudinal slope: Maximum 8% where possible, otherwise maximum 15%
Accessibility: Universal accessibility where possible, including access points to accessible portions
Buffer: 3 m minimum
Infrastructure: Occasional benches, occasional staging areas, kiosks, signage, waste receptacles, bollards

SCHEDULE "B"
WORKS

Garbage Can
Benches
Interpretive Signage
Fencing

