

AGREEMENT – McCulloch Lake Water Access

THIS AGREEMENT made as of the 31st day of March, 2025

BETWEEN:

1205687 BC LTD.

9995 McCulloch Lake Rd Naramata BC V0H1N0

(hereinafter referred to as the “Resort”)

OF THE FIRST PART

AND:

CITY OF KELOWNA, (description of the organization)

(hereinafter referred to as the “City”)

OF THE SECOND PART

WHEREAS

- A. The Resort is the registered owner of land (the “Resort Land”) being in the Central Okanagan Regional District, in the Province of British Columbia and more particularly known and described as:

Lot 1 District Lots 686S and 41775 Similkameen Division Yale District
Plan KAP68835 Except Phase 1 Strata Plan EPS7766
PID: 025-014-102
9995 McCulloch Lake Road

which land is utilized for a resort development.

- B. The Resort is desirous of entering into an agreement to obtain an interruptible supply of water for the Resort Property;
- C. The City has water licenses for the use, storage and supply of water from the McCulloch Lake Reservoir (“McCulloch Lake”), which is adjacent to the Resort, and such licenses allow the Resort to draw and use water from McCulloch Lake; and
- D. The City is prepared to allow the Resort to draw and use water from McCulloch Lake on the terms and conditions contained herein.

NOW THEREFORE in consideration of the mutual promises and of the covenants hereafter contained, the receipt and sufficiency of which each party acknowledges, IT IS AGREED:

1. TERM

1.1 The term of this Agreement shall be five (5) years and shall run from the first day of April, 2025, to the last day of December, 2030. At the end of the initial 5-year term the Agreement shall automatically renew each year for a one-year term until terminated in accordance with this Agreement.

2. DESIGN AND MAINTENANCE OF INTAKE PIPE

2.1 Prior to drawing any water from McCulloch Lake pursuant to this Agreement, the Resort will submit plans, drawings and specifications for an intake pipe to bring water from McCulloch Lake to the Resort to the City for review and approval (the "Intake Pipe"). Once approved by the City in writing, the relevant plans, drawings and specifications will be the "Approved Design" for the purposes of this Agreement.

2.2 The Resort will construct the Intake Pipe strictly in accordance with the Approved Design.

2.3 Once constructed, the Resort will obtain written certification from a professional or consultant acceptable to the City certifying that the Intake Pipe is complete and has been constructed in accordance with the Approved Design, and, concurrently, the Resort shall provide the City with as built drawings of the portion of Intake Pipe extending from McCulloch Lake to the Resort Land property line.

2.4 If the Resort fails to complete the requirements outlined in sections 2.1 – 2.3 within 180 days of the date this Agreement is fully executed, this Agreement will automatically terminate and be of no force or effect.

2.5 After completion, the Resort will operate and maintain the Intake Pipe in good condition and to the City's satisfaction and will repair or replace the Intake Pipe upon the request of the City, however, the Resort agrees that it will not materially alter or replace the Intake Pipe without the prior written approval of the City.

3. SUPPLY

3.1 The City shall allow the Resort access to surplus, natural, untreated water from McCulloch Lake.

3.2 The City is not obligated to allow the Resort to draw water from McCulloch Lake if the Resort's proposed draw would exceed the limits of the City's applicable water licenses and permits.

3.3 The City covenants with the Resort that:

- (a) It will allow the Resort to draw up to a maximum of 23 cubic metres of water per day from McCulloch Lake.
- (b) It will allow higher volumes of water removal from McCulloch Lake during or in response to a structural or wildfire event, with the extent of such higher volumes remaining within the City's sole discretion, and the Resort Agrees that it will not draw additional higher volumes of water until the City has authorized such additional draws in writing.

3.4 The Resort acknowledges and agrees that:

- (a) The City provides no representations or warranties regarding the quality of the water in McCulloch Lake or the water's suitability for the Resort's purposes.
- (b) The quality of McCulloch Lake's water can vary based on several factors, including during the year due varying inflows from the watershed into the lake, changes in elevation of the water in the lake throughout the year, temperature variation and wildfires.
- (c) McCulloch Lake water may be polluted by recreational users.
- (d) The Resort is solely responsible for all aspects of water treatment and distribution within the Resort Land in accordance with all applicable legislation.
- (e) The scope of the Resort under this Agreement includes 22 habitable structures, including cabins and lodges generally as proposed in Attachment A. Should The Resort choose to expand the scope of the Resort in the future by adding additional habitable structures and require additional water supply, the Resort will negotiate a new agreement with the City.

3.5 The Resort covenants that:

- (a) It will not draw more than 23 cubic metres of water per day from McCulloch Lake.
- (b) Water drawn from McCulloch Lake will be used only for irrigation, human health and sanitary purposes.
- (c) It will not distribute water drawn from McCulloch to properties, structures or end users located outside the Resort Lands, nor will it allow end users to redistribute the such water to properties, structures or end users located outside the Resort Lands
- (d) The Resort's water use will comply with all applicable City regulations, including irrigation use and timing, and the Water Use Restrictions Stages including in *Water Regulation Bylaw*

10480, as amended, revised and replaced from time to time (the “Bylaw”). In the event that the City declares Stage 3 Water Use Restrictions pursuant to the Bylaw, the Resort will stop any irrigation use and restrict its water use to human health and sanitary purposes. In the event that the City declares Stage 4 Water Use Restrictions, the Resort will cease drawing water from McCulloch Lake.

4. PRICE AND PAYMENT FOR WATER

- 4.1 The City will invoice the resort once annually for water use based on an assumed annual average consumption of 3,000 cubic metres per annum times the volumetric rate, applicable for that year, for Non-Potable Services as defined in the Bylaw.
- 4.2 The City may, at its sole discretion, revise the assumed annual average consumption rate used to calculate the amount payable by the Resort as outlined in section 4.1 by giving notice to the Resort of such revision.
- 4.3 The Resort will pay the City’s invoice within 60 days of issuance, and late payments will be subject to an additional 7% fee, compounded monthly.

5. COST AND PREPARATION OF AGREEMENT

The Resort shall, within 30 days of demand, pay the City all costs incurred in preparing and executing Agreement.

6. NO LEGAL OBLIGATION

It is recognized by the Resort that this Agreement to allow the Resort to draw water from McCulloch Lake creates no legal obligation on the part of the City to supply water to the Resort and only sets terms for access in order to withdraw with from McCulloch Lake under the City’s Water Licenses administered by the Province and terms of payment which the City may, in its absolute discretion, supply to the Resort and that the Resort acknowledges it has no legal right to compel the City to supply water under conditions above nor recover any damages from the City for the failure to supply water.

7. RELEASE AND INDEMNITY

- 7.1 Neither the City nor their respective personnel or contractors will be liable for, and the Resort hereby releases the City and their respective elected officials and directors, officers, employees, servants, contractors and agents (“Personnel”) from all liabilities, actions, judgments, claims, losses, damages, orders, fines, penalties, expenses, including related professional and other fees and disbursements, and costs losses (“Losses”), including without limitation, Losses as a result of any bodily injury or death caused, suffered or sustained as a

result of Resort's supply of water to end users unless resulting from the respective negligence or wilful acts of the City or their respective Personnel or contractors, as the case may be.

7.2 The Resort will indemnify and save harmless the City and their Personnel from and against all Losses which the City or their respective Personnel may suffer or incur arising out of this Agreement, including, without limitation, all Losses suffered or incurred by the City or their respective Personnel that arise, whether directly or indirectly, from any breach by the Resort, its Personnel, or any other person for whom the Resort is responsible in law, of any of its covenants and obligations under this Agreement, and except where such Losses result from the respective negligence or wilful acts of the City or their Personnel, as the case may be.

8. TERMINATION CONDITIONS

8.1 Should either party be in breach of its covenants or undertakings under this Agreement which remains unrectified for a period of 30 days following written notification of such breach, the Party not in breach may, at its option and without prejudice to any other rights or remedies it might have, immediately terminate this Agreement.

8.2 Either party has the right to terminate this agreement with one year's written notice for any reason.

8.3 Should the Regional District of Central Okanagan rescind its consent to this Agreement then the City will provide one year's notice of Termination.

8.4 Should this Agreement be terminated, the Resort will be responsible to remove or deactivate the Intake Pipe to the City's satisfaction.

9. GENERAL

9.1 **Time** – Time shall be the essence of this Agreement and the transactions contemplated in this Agreement.

9.2 **Notice** – Any notice required or permitted to be given under this Agreement shall be sufficiently given if delivered personally or if sent by prepaid registered mail to the address indicated on page one provided that any party shall be entitled to designate another address by giving notice of it to the other party in accordance with the terms of this Agreement. Any notice so mailed shall be deemed to have been received, except during a period of interruption of normal postal service, on the fourth business day following the date of mailing.

9.3 **Further Assurances** – Each party shall from time to time execute and deliver or cause to be executed and delivered all such further documents and instruments and do or cause to be done all further acts and things as any of the other party may reasonably require as being

necessary or desirable in order to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement or any provision hereof.

9.4 **No Assignment** – No party may assign its rights under this Agreement without the prior written consent of the other party.

9.5 **Entire Agreement** – This Agreement constitutes the entire agreement between the parties with respect to the subject matter of the Agreement and contains all of the representations, warranties, covenants and agreements of the respective parties, and may not be amended or modified except by an instrument in writing executed by the parties. This Agreement supersedes all prior agreements, memoranda, and negotiations between the parties.

9.6 **Jurisdiction** – This Agreement shall be construed in accordance with and governed by the laws of British Columbia.

9.7 Counterparts – This Agreement may be signed in counterparts and each such counterpart will constitute an original document and such counterparts, taken together, will constitute one and the same instrument. A counterpart may be delivered by fax or any other form of electronic transmission.

As evidence of their agreement to be bound by this Agreement, the parties have executed this Agreement below:

THE CITY OF KELOWNA by its'
authorized signatories:

Signature

Name

Title

Date

1205687 BC LTD. by its' authorized
signatories:

Signature

Name

Title

Date

Signature

Name

Title

Date

Signature

Name

Title

Date

Attachment A

