

City of Nanaimo
REPORT TO COUNCIL

FILE COPY

DATE OF MEETING: 2013-OCT-28

AUTHORED BY: BILL CORSAN, MANAGER, REAL ESTATE

RE: DISPOSITION OF 100 GORDON STREET FOR CONFERENCE CENTRE HOTEL

STAFF RECOMMENDATION:

That Council:

1. approve the agreements associated with the sale of City owned land at 100 Gordon Street for a conference centre hotel to SSS Manhao; and
2. authorize the Mayor and Corporate Officer to execute the necessary documents to effect the transaction.

PURPOSE:

The purpose of this Staff report is to seek Council endorsement of the agreements linked to the conditions precedent for the sale of City owned land at 100 Gordon Street to SSS Manhao.

BACKGROUND:

At the Council meeting of 2013-JUL-22, the following resolutions were passed:

That Council:

1. accept the Offer to Purchase, dated for reference June 19, 2013 (the "Offer"), from SSS Manhao International Tourism Group (Canada) Co. Ltd. ("Manhao");
2. authorize the Mayor and Corporate Officer to execute the Offer and deliver it to Manhao;
3. authorize Staff to do all such acts as are necessary to give effect to the Offer; and
4. authorize all further steps and proceedings contemplated by the Offer and authorizes the execution and delivery of the Closing Documents (as defined in the Offer), in the form acceptable to the City Manager.

At the Council meeting of 2013-OCT-07 Council approved Development Permit 854 for the hotel project and accepted the project under the City's "REVITALIZATION TAX EXEMPTION BYLAW 2011 NO.7143".

SSS Manhao and Staff have completed the various agreements associated with the Offer to Purchase and are returning to Council for approval. The agreements can be found in Attachment A.

DISCUSSION:

Following the approval of the Offer to Purchase by Council, Staff and representatives from SSS Manhao have been actively completing the requirements set out under the conditions precedent. The conditions included the following:

Purchaser's Conditions Precedent:

First Subject Removal

- Satisfaction with title; and
- Review of documents associated with property.

Second Subject Removal

- Due diligence of property including zoning, development matters and servicing;
- Environmental investigations to determine suitability of the soils;
- Confirmation of strata subdivision potential;
- Satisfaction of ability to apply for a revitalization tax exemption under Bylaw 2011 No. 7143. Council approved the project under the revitalization tax exemption program on 2013-OCT-07.
- Right of First Negotiation to enter into a management agreement for the VICC should the existing manager be terminated.

Third Subject Removal

- SSS Manhao had 150 days to obtain a Development Permit (DP) for the project.
- The DP was approved by Council on 2013-OCT-07.

Mutual Conditions Precedent

Parking Agreement – The VICC parking garage will remain a public parking facility with the City responsible for maintenance and enforcement. Parking will be allocated on a first come, first serve basis. Under the agreement, 255 non-designated parking spaces will be available for the hotel. SSS Manhao will purchase parking passes in bulk in the form of single day tickets. These tickets will then be resold to hotel guests. Rates will be based on the Parking Bylaw rate which is currently \$95 per month. This rate is the same rate charged to the Coast Hotel and the public with long term parking passes in City parkades. Council can amend the bylaw rate from time to time.

Option to Purchase – the City will have an option to buy the property back should SSS Manhao not obtain a foundation permit and construct the foundation within 18 months of acceptance of the offer.

Development Covenant – the City will register a Section 219 Covenant against title that will include restrictions on the property:

- The hotel is to be constructed within 3 years;
- The property can only be used as a hotel;
- The hotel must operate the hotel as at least a four-diamond hotel under the CAA/AAA diamond rating system;
- If stratified, the owners are entitled to reside in their unit for no longer than 2 weeks per year without paying hotel rates;
- Strata units are to be booked through a central reservation system;
- An overhead walkway between the hotel and VICC is to be built at the purchasers cost; and
- The owner of the hotel must guarantee a block of guest rooms for multi-day conferences in accordance with the chart below:

Size of Multi Day Conference	Greater than 12 months notice	Less than 12 months notice	Less than 6 months notice	Between 3 and 6 months notice
200 or more delegates	150 rooms	130 rooms	100 rooms	50 rooms
Less than 200 delegates	100 rooms	80 rooms	50 rooms	30 rooms
Less than 100 delegates	25 rooms	25 rooms	25 rooms	25 rooms

Consolidation of Closed Road – the road closure plan will be consolidated with the parent parcel. Completed on 2013-JUL-19.

Walkway Easement to VICC – the City will grant an easement to SSS Manhao to construct an overhead walkway.

Easement to Piper Park – the City will grant an easement to SSS Manhao to construct and maintain a walkway from the hotel to Piper Park.

Next Steps

The Offer to Purchase sets the closing date for 30 days after the removal of the final conditions. If Council approves the agreements, a closing date would be set for November 30th, 2013. Following the transfer of the property to SSS Manhao, the next steps are as follows:

- SSS Manhao anticipates submitting a building permit by 2013-DEC-15.
- Construction is anticipated to commence in spring of 2014.
- The hotel should be complete and operational by the summer of 2016.

Strategic Plan Considerations

The disposition of this parcel of land meets a number of the key priorities identified in the 2012-2015 Strategic Plan, including:

Strategy	
Taking Responsibility	Potential Strategies and/or Initiatives <ul style="list-style-type: none">Continuing to facilitate change and overall development consistent with vision and plans; taking action steps to be a catalyst or investment in the City's future.
Community Building Partnerships	Successful City Initiative <ul style="list-style-type: none">Commitment to collaborate with organizations and groups to explore how the City can become one of the BC's most successful cities.
4 Sustainability Pillars – Ongoing Commitments to Policy, Goals and Action Plans	Economic Health <ul style="list-style-type: none">Support for Nanaimo Downtown PlanCompletion of Vancouver Island Conference Centre and incentives to conference hotel developmentHotel Revitalization Tax Exemption

Respectfully submitted,



Bill Corsan
MANAGER,
REAL ESTATE



Ian Howat
ACTING GENERAL MANAGER
CORPORATE SERVICES

CITY MANAGER COMMENT:

I concur with the Staff recommendation.

2013-OCT-22
LD001167

WC/II

ATTACHMENT A

CONFERENCE CENTRE OPERATIONS – RIGHT OF FIRST NEGOTIATION

THIS AGREEMENT dated for reference October 21, 2013,

BETWEEN:

SSS MANHAO INTERNATIONAL TOURISM GROUP (CANADA) CO. LTD.,
a company duly incorporated under Incorporation Number BC0953560
pursuant to the provisions of the *Business Corporations Act*, SBC 2002,
c 57, having its registered office at Suite 270, 10711 Cambie Road,
Richmond, British Columbia V6X 3G5

("Manhao")

AND:

CITY OF NANAIMO, a British Columbia local government, having its
administrative offices at 455 Wallace Street, Nanaimo, British
Columbia V9R 5J6

(the "City")

GIVEN THAT:

- A. Pursuant to an Offer to Purchase between Manhao and the City dated for reference June 19, 2013 (the "Offer to Purchase"), Manhao agreed to purchase from the City for the purpose of developing and operating a hotel (the "Hotel") certain land situated at 100 Gordon Street, Nanaimo, British Columbia, and legally described as:

Parcel Identifier: 029-126-002

Lot A Section 1 Nanaimo District and of the Bed of the Public Harbour of
Nanaimo Plan EPP30518

(the "Land");

- B. The City is the owner of the Vancouver Island Conference Centre, situated across Gordon Street from the Land, which is legally described as:

Parcel Identifier: 026-458-942

Lot A Section 1 Nanaimo District and of the Bed of the Public Harbour of Nanaimo
Plan VIP79754 Except that part in Plan VIP85148

(the "Conference Centre");

- C. When the existing agreement with respect to operation of the Conference Centre between the City and the Manager as hereinafter defined (the "Current Operating Agreement") expires or is otherwise terminated, Manhao wishes to have the first right to negotiate with the City an agreement to operate the Conference Centre in conjunction with Manhao's operation of the Hotel;

- D. Pursuant to the Offer to Purchase, the City's sale of the Land and Manhao's purchase of the Land is subject to the parties agreeing to and entering into this Right of First Negotiation (as hereinafter defined);

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

Definitions

1. In this Agreement, "Business Day" means a day that is not a Saturday, Sunday or statutory holiday in British Columbia.
2. Unless this Agreement specifies time in Business Days, time is to be calculated as calendar days.

Right of First Negotiation

3. The City hereby grants to Manhao the first right to negotiate an agreement to operate the Conference Centre ("Right of First Negotiation").

Current Operating Agreement

4. The City hereby represents and warrants to Manhao that the Current Operating Agreement will expire on March 18, 2017 and there is no right of extension or renewal of same. Furthermore, the Current Operating Agreement may be terminated, inter alia, as follows:
 - (a) by the City, in the case of gross negligence or wilful misconduct of the current manager ("Manager");
 - (b) by the City in the case of a breach of the Current Operating Agreement by the Manager that is not cured upon receipt of sixty (60) days' written notice from the City;
 - (c) upon the City's election to terminate in the event the Conference Centre is destroyed and not rebuilt;
 - (d) upon six (6) months' prior written notice by either party to the other;
 - (e) in the event of the failure of the Conference Centre to meet certain performance criteria; and
 - (f) in the event the Manager files for bankruptcy or becomes insolvent.

Amendment of Operating Agreement

5. The City agrees with Manhao that the City will not amend the Current Operating Agreement in any way that would extend the expiry date or that would grant the Manager any right of extension or renewal.

End of Current Operating Agreement

6. The City must give notice to Manhao of the termination, or upcoming termination, of the Current Operating Agreement no earlier than one year before termination of the Current Operating Agreement and no later than nine (9) months before the termination of the Current Operating Agreement.

Meaning of Termination

7. For the purposes of section 6, the Current Operating Agreement will be considered to terminate if it expires or is terminated by the City according to its terms as set forth in section 4 of this Agreement, or if it is terminated by mutual consent.

Manhao Response to City Notice

8. If Manhao wishes to exercise its Right of First Negotiation, it must notify the City within twenty (20) Business Days of receiving the City's notice under section 6 hereof.

Negotiation Period

9. If Manhao exercises its Right of First Negotiation under section 8 hereof, the City and Manhao will enter into exclusive good faith negotiations for a 90 day period commencing the day after the City has received Manhao's exercise of its Right of First Negotiation (the "Negotiation Period").

Good Faith Negotiations

10. The City and Manhao agree that during the Negotiation Period, they will conduct, in good faith, negotiations at mutually convenient times and locations in order to attempt to negotiate an agreement for the operation of the Conference Centre in conjunction with Manhao's operation of the Hotel.

Time Extension

11. Nothing in this Agreement prevents the parties, if they both agree in writing, from extending the Negotiation Period.

Exclusive Negotiations

12. During the Negotiation Period, the City agrees that it will not negotiate the operation of the Conference Centre with any other entity.

Scope of Negotiations

13. The City and Manhao agree that should they enter into negotiations for the operation of the Conference Centre, the scope of negotiations will include the term of the operating agreement (with or without renewals), the payments from the City to Manhao, cash flow, payment of expenses, reserve funds, the marketing of conferences, conference bookings and administration, staffing, standards of service, hours of operations, contracts for services, food operations, parking lot operations, co-ordination between Conference Centre and Hotel operations, cleaning, maintenance and repairs, furnishings and improvements, security, insurance (property and liability), accounting and record-keeping, termination in the event of damage or destruction, consequences of defaults, representations and warranties, releases, indemnities, and transitional matters, in addition to other matters to be negotiated as may be required by the parties.

Ownership of Hotel

14. Notwithstanding anything else in this Agreement, the Right of First Negotiation does not apply and the City is not required to send Manhao the notice under section 6 unless at the time the City would send the notice under section 6 Manhao is the sole owner and operator of the Hotel unless Manhao has assigned this Right of First Negotiation under section 15 in which case the City shall send notice to such assignee.

Assignment by Manhao

15. Manhao may not assign this Right of First Negotiation except to an entity who becomes the sole owner or operator of the Hotel, and in that case:
 - (a) Manhao and the assignee must promptly provide the City with a copy of the assignment agreement;
 - (b) Manhao must release the City from all obligations under this Agreement; and
 - (c) the assignee must enter into an assumption agreement with the City agreeing to assume all of Manhao's obligations under this Agreement.

Assignment by City

16. The City agrees not to sell, transfer, or otherwise convey or offer to sell, transfer, or otherwise convey the Conference Centre unless the City first assigns this Right of First Negotiation to the purchaser and in that case:
 - (a) the City and the purchaser must promptly provide Manhao with a copy of the assignment agreement;
 - (b) Manhao must release the City from all obligations under this Agreement; and
 - (c) the purchaser must enter into an assumption agreement with Manhao agreeing to assume all of the City's obligations under this Agreement.

Effect of Right of First Negotiation

17. For certainty, this Right of First Negotiation does not require the City and Manhao to enter into an agreement for the operation of the Conference Centre, or entitle Manhao to such a contract, and instead, this Right of First Negotiation merely confers on Manhao a first and exclusive right to attempt to negotiate such an agreement.

City Ability to Negotiate

18. If, by the end of the Negotiation Period, no agreement has been reached between the City and Manhao for the operation of the Conference Centre, or if at any time during the Negotiation Period, Manhao gives the City notice that it is declining to negotiate or continue to negotiate an agreement for the operation of the Conference Centre, then the City shall be free to negotiate, offer and enter into offers and agreements with other parties with respect to the operation of the Conference Centre on such terms and conditions as it may see fit, and with any party or parties, and this Right of First Negotiation shall no longer be of any force and effect, whether or not any such agreement to operate the Conference Centre is entered into. Notwithstanding the foregoing, if by the end of the Negotiation Period no agreement has been reached between the City and Manhao for the operation of the Conference Centre, the City shall utilize a public process including, without limitation, tendering or request for proposals with respect to operation of the Conference Centre, in which case Manhao shall be entitled to participate in such process and submit a bid or proposal, as the case may be.

Negotiation by City Staff

19. For certainty, this Right of First Negotiation does not entitle Manhao to enter into negotiations with Council of the City, and instead, Manhao agrees that negotiations on behalf of the City may be conducted by the City Manager or any other senior City staff person or persons.

Notice

20. Any notice which may be given pursuant to this Agreement must be in writing and delivered by hand and addressed to the applicable party at its address set out above, or to such other address as the party may specify by notice in writing to the other in accordance with this section. A notice will be deemed to be given on the day of delivery.

All notices to the City must be addressed to the attention of the City's Corporate Officer.

Time of Essence

21. Time is of essence of this Agreement.

No Other Agreements

22. This Agreement is the entire agreement between the parties regarding its particular subject matter and there are no representations or warranties, express or implied, statutory or otherwise, and no collateral agreements other than as expressly set forth or referred to in this Agreement.

Non-Registration

23. The parties hereto agree and acknowledge that this Agreement may not be registered against title to the Land or the Conference Centre.

Benefit

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

Modification

25. This Agreement may not be modified except by an instrument in writing signed by the parties.

Interpretation

26. Wherever the singular is used or neuter is used in this Agreement, it includes the plural, the feminine, the masculine or body corporate where the context or the parties so required.

Governing Law

27. This Agreement will be governed by and construed in accordance with the laws of British Columbia.

Arbitration

28. All disputes arising out of or in connection with this Agreement, or in respect of any defined legal relationship associated therewith or derived therefrom, shall be referred to and finally resolved by arbitration in accordance with the *Commercial Arbitration Act* of British Columbia under the rules of the British Columbia International Commercial Arbitration Centre. The appointing authority shall be the British Columbia International Commercial Arbitration Centre. The case shall be administered by the British Columbia International Commercial Arbitration Centre in accordance with its "Procedures for Cases under the BCICAC Rules". The place of arbitration shall be Nanaimo, British Columbia.

Execution in Counterparts

29. This Agreement may be executed in one or more facsimile or PDF counterparts, each of which will be deemed to be an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same Agreement.

IN WITNESS WHEREOF the City and Manhao have executed this Agreement as of the day and year written below.

CITY OF NANAIMO by its authorized signatories:

Per: _____


Name and Title: John Ruttan, Mayor

Per: _____

Name and Title: Kristin King, Corporate Officer

DATE: _____

SSS MANHAO INTERNATIONAL TOURISM GROUP
(CANADA) CO. LTD. by its authorized signatories:



Signature
CHEN JUNHAO

Name
President

Title
October 21, 2013
DATE: _____

AGREEMENT FOR USE OF CONFERENCE CENTRE PARKING SPACES

THIS AGREEMENT dated for reference October 21, 2013,

BETWEEN:

SSS MANHAO INTERNATIONAL TOURISM GROUP (CANADA) CO. LTD.,
a company duly incorporated under Incorporation Number BC0953560
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Lot A Section 1 Nanaimo District and of the Bed of the Public Harbour of Nanaimo
Plan VIP79754 Except that part in Plan VIP85148

(the "Conference Centre");

- C. Manhao will construct the Hotel on the Land without any aboveground or underground parking spaces, and Manhao will operate the Hotel such that guests of the Hotel will be able to use parking spaces in the underground parking garage of the Conference Centre(the "Parking Garage");

- D. Pursuant to the terms of the Offer to Purchase, the City's sale of the Land and Manhao's purchase of the Land is subject to the parties agreeing to and entering into this agreement (the "Agreement");

NOW THEREFORE in consideration of the premises, promises and payments herein, the sum of \$1.00 paid by Manhao to the City, and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by the parties), the City and Manhao covenant and agree as follows:

Use of Parking Spaces

1. Manhao may use up to Two Hundred Fifty-Five (255) parking spaces (the "Parking Spaces") within the Parking Garage and the City shall provide for use by Manhao the Parking Spaces within the Parking Garage on the terms and conditions of this Agreement.

Term of Agreement

2. This Agreement commences on the date that the Hotel is open for business and continues for five (5) years after that date (the "Initial Term").

Renewal of Term

3. Upon the expiry of the Initial Term, Manhao will have the option to renew this Agreement for an unlimited number of additional terms of five (5) years each (individually, "Additional Term"; collectively, "Additional Terms") on the same terms and conditions as herein contained.

Method of Renewal

4. Manhao may exercise its option to renew under section 3 by giving written notice to the City at least two months (but no earlier than 6 months) before the expiry of the Initial Term or any Additional Term, and if this Agreement is so renewed, it is not necessary for the City and Manhao to sign a renewal agreement.

Termination of Agreement

5. Notwithstanding section 2, section 3 or anything else in this Agreement, the Initial Term and any Additional Terms of this Agreement will automatically terminate if the Land should at any time cease to be used as a hotel in compliance with the Development Covenant (the "Development Covenant") between Manhao and the City under section 219 of the *Land Title Act* and registered on title to the Land concurrently with the transfer of the Land to Manhao. For certainty, the Land shall not cease to be used as a hotel if the Hotel is closed for renovations or repairs; closed for sale to a new buyer; or closed for other legitimate purposes.

Hotel Guests

6. Manhao agrees that it will only authorize guests of the Hotel to park in the Parking Spaces. For certainty, the Parking Spaces may not be used by the Hotel's managers, employees, contractors or others, but nothing prohibits the Hotel's managers, employees, contractors or others from parking elsewhere in the Parking Garage on a daily or monthly basis in the same way as other members of the public.

Parking Fee

7. Manhao shall pay a parking fee to the City for each Parking Space used in relation to the Hotel for a day, or portion of day, based on the City's current rate for a monthly parking pass in the Parking Garage, divided by 30 to obtain a daily rate, which amount is payable for each one-day parking pass. This parking fee does not include Goods and Services Tax ("GST") (or similar tax), which must be paid in addition to the parking fee. For certainty, the fee for a monthly parking pass at the date of this Agreement is \$95.00 plus GST per space.

Increase in Parking Fee

8. Manhao acknowledges that the City's current rate for a monthly parking pass in the Parking Garage may be increased from time to time based on the rates as may be set from time to time by bylaw or resolution of the City.

Parking Passes

9. In order for Manhao to use the Parking Spaces pursuant to this Agreement, Manhao may purchase parking passes in bulk from the City from time to time and the City shall provide such parking passes for the Parking Spaces in the form of single-day passes for each Parking Space used (up to a maximum of 7,650 passes per month). Manhao shall arrange for the parking passes to be delivered to guests of the Hotel and shall instruct such guests to visibly display same through the windshields of their motor vehicles and motor cycles (collectively "Motor Vehicles"). Manhao shall not deliver or otherwise provide the parking passes to anyone other than guests of the Hotel.

Location of Parking Spaces

10. Manhao agrees that the Parking Spaces may not be designated within the Parking Garage as being for the exclusive use of the Hotel. The City, at its option, may choose to allocate, acting reasonably, one or more areas of the Parking Garage in any location as parking for the Hotel, or not to allocate any areas for parking for the Hotel. In the event the City does not allocate areas of the Parking Garage for the Hotel, guests of the Hotel may park in the Parking Spaces within the Parking Garage on a first come-first serve basis.

Costs of Parking Garage Operations

11. The City will be responsible for any and all costs related to the operation of the Parking Garage, including but not limited to, maintenance, repair, security, insurance, signage and taxes.

Rules and Regulations

12. Manhao agrees and acknowledges that the City may establish, from time to time, reasonable rules and regulations applicable to the Parking Garage, and consequences, including fines and towing, for breach of those rules and regulations. Manhao further agrees and acknowledges that Manhao will not use or authorize others to use the Parking Garage in contravention of the rules and regulations, but that Manhao shall have no obligation to enforce such rules and regulations. For certainty, if there is any contradiction between such rules and regulations and the terms and conditions of this Agreement, the latter shall prevail.

Compliance with Laws

13. Manhao shall use the Parking Garage and Parking Spaces in compliance with any and all applicable statutes, enactments, bylaws, regulations and orders from time to time in force and shall not contravene same.

Manhao Notice to Hotel Guests

14. Manhao shall provide notice to all guests of the Hotel that their use of the Parking Garage and the Parking Spaces is subject to the City's rules and regulations.

Availability of Parking

15. The City agrees that parking for guests of the Hotel will be available in the Parking Garage 24 hours per day, on each day of the year.

Access to Hotel

16. Manhao agrees and acknowledges that at times that the operator or manager of the Conference Centre chooses not to staff the lobby of the Conference Centre as contemplated in section 17, guests of the Hotel will be able to enter and exit the Parking Garage from the Hotel by the overhead walkway constructed above Gordon Street to be constructed by Manhao, from the main vehicle access point at Gordon Street, and from the main vehicle access point in the adjacent Bastion Parkade.

Staffing

17. Manhao agrees and acknowledges that the operator or manager of the Conference Centre may or may not choose to have the lobby of the Conference Centre and/or the Parking Garage staffed during any particular time of the day or day of the week, provided that access by guests of the Hotel to the Parking Garage is not affected.

Valet Parking

18. The City agrees that Manhao may use a system of valet parking for Motor Vehicles of guests of the Hotel in the Parking Garage.

Parking Garage Operations

19. Manhao agrees and acknowledges that operation of the Parking Garage is entirely within the control of the City, and without limitation, the City reserves the right, acting reasonably, from time to time, to add, remove or change signage, dimensions of the Parking Spaces and markings, directional signs, security measures, lighting, and other aspects of the Parking Garage, provided access and use of the Parking Spaces by guests of the Hotel is not affected.

Usage

20. Manhao may allow guests of the Hotel to use the Parking Spaces only for the parking of Motor Vehicles (to the extent that such Motor Vehicles fit in the Parking Garage and the Parking Spaces). Manhao acknowledges that campers and recreational vehicles will not fit in the Parking Garage and Parking Spaces. For certainty, Manhao acknowledges that the Parking Spaces may not be used for storage; for parking of unlicensed or uninsured Motor Vehicles, for repair or maintenance or washing of Motor Vehicles; or any other purpose other than parking; and the City may tow or ticket Motor Vehicles in breach of this provision.

Parking Garage Repairs, Maintenance

21. Manhao agrees that the Parking Garage may be closed completely or in part, from time to time, for necessary repairs and maintenance, but the City agrees to arrange such closures so as to cause as little disruption as possible to parking for guests of the Hotel. The City will attempt to give as much notice as possible to Manhao of such temporary closures of the Parking Garage. If the City has allocated areas of the Parking Garage for the Parking Spaces under section 10, the City may temporarily change those areas for the purposes of conducting repairs and maintenance. Notwithstanding anything in this section 21 to the contrary, unless in an emergency, the City will provide Manhao with 15 days notice of a temporary closure of any part of the Parking Garage and will provide reasonable alternate parking for guests of the Hotel for the duration of any temporary closure.

Conference Centre - Parking Garage Damage, Destruction

22. Notwithstanding section 2, section 3 or anything else in this Agreement, Manhao agrees that:

- (a) in the event that the Parking Garage should reach the end of its life-span and is unable to be used by Manhao for the purposes contemplated herein; or
- (b) in the event that the Parking Garage is completely destroyed by earthquake, fire or other cause; or
- (c) in the event that the Parking Garage is partially damaged or destroyed to the extent that Manhao cannot use same for the purposes contemplated in this Agreement,

the City will provide Manhao and guests of the Hotel with reasonable alternate parking in parkade(s) in close proximity to the Parking Garage during the Initial Term of this Agreement or any Additional Terms on the same terms and conditions as set forth in this Agreement or until such time as the Parking Garage may be reconstructed or restored by the City, whichever is earlier.

No Compensation

23. Provided the City provides reasonable alternate parking as contemplated in section 22, in no event will Manhao be entitled to compensation for any loss or damage, including business losses, resulting from temporary closure of the Parking Garage for maintenance and repairs under section 21, or from termination or suspension of this Agreement under section 5 or section 22.

Assignment by Manhao

24. Manhao may not assign this Agreement except to an entity who becomes the sole owner or licensee of the Hotel, and Manhao must not sell or otherwise transfer the Hotel to any entity unless Manhao assigns this Agreement to that entity. In that case:

- (a) Manhao and the assignee must promptly provide the City with a copy of the assignment agreement;
- (b) Manhao and the City will release each other from all future obligations under this Agreement from the date of assignment; and
- (c) the assignee must enter into an assumption agreement with the City agreeing to assume all of Manhao's obligations under this Agreement from the date of the assignment.

Assignment by City

25. The City agrees not to sell, transfer or otherwise convey the Conference Centre unless the City first assigns this Agreement to the purchaser and in that case:
- (a) the City and the purchaser must promptly provide Manhao with a copy of the assignment agreement;
 - (b) Manhao must release the City from all obligations under this Agreement from the date of assignment; and
 - (c) the purchaser must enter into an assumption agreement with Manhao, agreeing to assume all of the City's obligations under this Agreement from the date of the assignment.

Default

26. Due to the fact that the Hotel cannot be operated as a hotel without the parking arrangements set forth in this Agreement, the parties agree that this Agreement cannot be terminated for default, and instead, in the event of a default by one party, the other party may give a notice of default and reasonable time for correction of the default, and if the default is not corrected within that reasonable time, the other party may apply to court for a remedy in the form of injunction or damages.

Notice

27. Any notice which may be given pursuant to this Agreement must be in writing and either delivered by hand and addressed to the applicable party at its address set out above, or to such other address as the party may specify by notice in writing to the other in accordance with this section.

A notice will be deemed to be given on the day of delivery if delivered by hand. All notices to the City must be addressed to the attention of the City's Corporate Officer.

No Interest in Land

28. This Agreement shall not be interpreted as granting any interest in the Parking Garage to Manhao.

Waiver

29. Waiver of any default by a party shall not be interpreted or deemed to be a waiver of any subsequent default. All waivers must be in writing.

Time of Essence

30. Time is of essence of this Agreement.

No Other Agreements

31. This Agreement is the entire agreement between the parties regarding its particular subject matter, except as otherwise provided in the Offer to Purchase and in the Development Covenant between the City and Manhao registered on title to the Land concurrently with the transfer of the Land to Manhao .

Benefit

32. This Agreement enures to the benefit of and is binding upon the parties and their respective heirs, executors, successors, administrators, and permitted assigns.

Modification

33. This Agreement may not be modified except by an instrument in writing signed by the parties.

Interpretation

34. Wherever the singular is used or neuter is used in this Agreement, it includes the plural, the feminine, the masculine or body corporate where the context or the parties so required.

Governing Law

35. This Agreement will be governed by and construed in accordance with the laws of British Columbia.

Further Assurances

36. Each of the parties must at all times execute and deliver at the request of the other all such further documents, deeds and instruments, and do and perform such other acts as may be reasonably necessary to give full effect to the intent and meaning of this Agreement.

Joint and Several

37. If at any time more than one person (as defined in the *Interpretation Act* (British Columbia)) owns the Land, each of those persons will be jointly and severally liable for all of the obligations of Manhao under this Agreement.

No Representations

38. The City has made no representations, warranties, guarantees, promises, covenants or agreements to or with Manhao in respect of the particular subject-matter of this Agreement other than those expressed in writing in this Agreement, in the Offer to Purchase and in the Development Covenant.

Covenants

39. All provisions of this Agreement are to be construed as covenants.

Execution in Counterparts

40. This Agreement may be executed in one or more facsimile or PDF counterparts, each of which will be deemed to be an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same Agreement.

IN WITNESS WHEREOF the City and Manhao have executed this Agreement as of the day and year written below.

CITY OF NANAIMO by its authorized signatories:

Per: _____

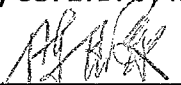
Name and Title: John Ruttan, Mayor

Per: _____

Name and Title: Kristin King, Corporate Officer

DATE: _____

**SSS MANHAO INTERNATIONAL TOURISM GROUP
(CANADA) CO. LTD.** by its authorized signatories:



Signature

CHEN JUNHAO

Name
President

Title

DATE: October 21, 2013

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)

KAHN ZACK EHRLICH LITHWICK LLP
270 - 10711 Cambie Road
Richmond BC V6X 3G5

Telephone: (604) 270-9571
LTO Client No. 011757
File No. 46320

Deduct LTSA Fees? Yes ☒

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

SEE SCHEDULE

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):

CITY OF NANAIMO

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

SSS MANHAO INTERNATIONAL TOURISM GROUP (CANADA) CO. LTD.

SUITE 270, 10711 CAMBIE ROAD
RICHMOND

V6X 3G5

BRITISH COLUMBIA
CANADA

Incorporation No
BC0953560

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)

Execution Date

Y	M	D

Transferor(s) Signature(s)

CITY OF NANAIMO by its
authorized signatory(ies):

Mayor:

Corporate Officer:

(as to all signatures)

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.

Officer Signature(s)

Signature(s) 

MICHAEL L. LIPTON
Barrister & Solicitor
270-10711 CAMBIE ROAD
RICHMOND, BRITISH COLUMBIA
V6X 3G5 604-270-9571

(as to all signatures)

Execution Date

Y	M	D
13	10	21

Transferor / Borrower / Party Signature(s)

SSS MANHAO INTERNATIONAL
TOURISM GROUP (CANADA) CO.
LTD. by its authorized signatory(ies):

解 答

Name:

Name:

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.

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

**NO PID NMBR PART OF GORDON STREET IN SECTION _____, _____ CITY, BEING PART
OF ROAD DEDICATED BY PLAN EPP _____**

STC? YES ☐

[Related Plan Number]

EPP _____

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

**026-458-942 LOT A SECTION 1 NANAIMO CITY AND OF THE BED OF THE PUBLIC
HARBOUR OF NANAIMO PLAN VIP79754 EXCEPT THAT PART IN PLAN
VIP85148**

STC? YES ☐

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

STC? YES ☐

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Easement		over parts on Plan EPP _____ Dominant Land: PID 029-126-002 Lot A Section 1 Nanaimo City and of the Bed of the Public Harbour of Nanaimo Plan EPP30518

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
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NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
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NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
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NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
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NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
--------------------	------------	------------------------

TERMS OF INSTRUMENT – PART 2

EASEMENT FOR OVERHEAD WALKWAY

This Agreement dated for reference the 21st day of October, 2013

BETWEEN:

SSS MANHAO INTERNATIONAL TOURISM GROUP (CANADA) CO. LTD., a company duly incorporated under the laws of the Province of British Columbia having its registered and records office care of Suite 270, 10711 Cambie Road, Richmond, British Columbia V6X 3G5

(the "Owner")

OF THE FIRST PART

AND:

CITY OF NANAIMO, a municipality incorporated under the laws of the Province of British Columbia and having an address at 455 Wallace Street, Nanaimo, British Columbia, Canada V9R 5J6

(the "City")

OF THE SECOND PART

WHEREAS:

- A. Pursuant to an Offer to Purchase between Manhao and the City dated for reference June 19, 2013 (the "Offer to Purchase"), Manhao agreed to purchase from the City for the purpose of developing and operating a hotel (the "Hotel") certain land situated at 100 Gordon Street, Nanaimo, British Columbia, and legally described as:

Parcel Identifier: 029-126-002

Lot A Section 1 Nanaimo City and of the Bed of the Public Harbour of Nanaimo Plan EPP30518

(the "Land");

- B. The City is the owner of the Vancouver Island Conference Centre (the "Conference Centre"), which is legally described as:

Parcel Identifier: 026-458-942

Lot A Section 1 Nanaimo City and of the Bed of the Public Harbour of

Nanaimo Plan VIP79754 Except that part in Plan VIP85148

(the "Conference Centre Property");

- C. Pursuant to the terms of the Offer to Purchase, the City's sale of the Land and Manhao's purchase of the Land is subject to Manhao's construction of an overhead walkway between the Conference Centre and the Hotel (the "Walkway") in order to provide guests of the Hotel, users of the Conference Centre and the public generally free access between the Hotel and Conference Centre;
- D. Pursuant to section 35(1)(a) of the *Community Charter*, the City owns the highway between the Land and the Conference Centre Property, which highway is known as Gordon Street (the "Highway");
- E. Section 35(11) of the *Community Charter* authorizes Council of the City to grant an easement or permit an encroachment in respect of a highway vested in the City under section 35(1)(a);
- F. By this Agreement and on the terms of this Agreement, the City is prepared to grant to the Owner an easement to permit the Owner to construct and use the Walkway above the Highway and above a portion of the Conference Centre Property.

NOW THEREFORE this Agreement is evidence that in consideration of the mutual covenants contained herein, the payment of \$1.00 by the Owner to the City and other good and valuable consideration (the receipt and sufficiency of which is acknowledged by each of the parties), the City and Owner covenant and agree as follows:

Permission to Encroach

- 1. The City hereby grants to the Owner the non-exclusive right, license, liberty, easement, privilege and permission (the "Easement") to encroach upon that portion of the Highway and portion of the Conference Centre Property shown outlined in heavy black on the survey plan prepared by _____, B.C. Land Surveyors, dated the ____ day of _____, 2013, a copy of which is attached as Schedule "A" (the "Easement Area") for the sole purpose of constructing, maintaining, repairing, replacing, occupying, and using the Walkway on the terms and conditions of this Agreement.

Use of Walkway

- 2. The City grants this Easement to the Owner on the condition that the Owner must permit the Walkway to be used to provide guests, employees and others using the Hotel, and users of the Conference Centre Property, and the public generally free access through the Walkway between the Hotel and Conference Centre Property.
- 3. For certainty, the Owner may not use the Walkway for retail sales, for storage, for display of items or any purpose other than pedestrian access between the Hotel and

Conference Centre Property.

Design of Walkway

4. The Owner shall construct the Walkway in strict accordance with the design prepared by gBL Architects, a copy of which is attached to Development Permit 854 (approved by City Council on October 7, 2013), which design, among other things, specifies the dimensions of the Walkway, the height of the Walkway above the Highway and the Conference Centre Property, the building materials and structural components of the Walkway.

Term of Easement

5. This Easement commences on the date of its registration in the Land Title Office and, subject to section 16, continues until such time as the Hotel is intentionally demolished or the Hotel is demolished by earthquake, fire or other similar cause and the Owner chooses not to reconstruct the Hotel, and in that case, the Owner shall:
 - (a) remove the Walkway provided the Owner causes as little disruption as possible to the Conference Centre in connection with such removal;
 - (b) undertake all work necessary to the Conference Centre to remedy any damage caused by the removal of the Walkway to restore the Conference Centre to the state it was prior to construction of the Walkway; and
 - (c) discharge this Easement from the Land Title Office.

Ownership of Walkway

6. The Owner and City agrees that, despite any rule of law or equity, the Walkway belongs at all times to the Owner.

Owner Responsibility

7. The Owner is solely responsible for all aspects of the Walkway, including repair, maintenance, cleaning, clearing, replacement, safety, security, inspection, utilities and other matters specified in this Agreement, except where caused by the negligence or deliberate wrongful acts of the City, the City Representatives (as hereinafter defined) or those for whom the City is responsible at law.

Standard to be Met

8. The Owner shall at all times repair, maintain, clean, clear, replace, operate and inspect and keep the Walkway in a good condition and repair, reasonable wear and tear excepted, that ensures the safe passage of the public through the Walkway.

Security

9. The Owner is responsible for all aspects of security of the Walkway and the Owner may employ security cameras, security guards and other measures to ensure the safety of those using the Walkway.

Hours of Opening

10. The Owner shall ensure that the Walkway is open at all times when the Conference Centre Property is open. The Owner may by a system of gates or otherwise prohibit access across and along the Walkway during hours that the Conference Centre Property is closed.

Cleaning

11. The Owner shall clean the Walkway and remove all rubbish and debris on a regular basis.

Costs

12. The Owner shall be responsible for all costs, payments, outlays and expenses with respect to the Walkway and this Agreement, including those associated with engineering, survey, legal, insurance, construction, maintenance, repair, removal, replacement, inspection, cleaning, security, utilities, or servicing, unless any of the aforesaid costs, payments, outlays or expenses are caused by the negligence or deliberate wrongful acts of the City or those for whom the City is responsible at law.

Required Repairs

13. The City may at any time inspect the Walkway and the Owner shall conduct any repairs or maintenance to the Walkway as directed by the City, acting reasonably, if the Owner is in breach of its obligations pursuant to section 8. Despite the fact that the City may require repairs to the Walkway, the City is not responsible for the condition or safety of the Walkway and the City is not required to give any notices to repair.

Disruption of Public Travel

14. The Owner shall give the City notice of its intention to undertake any repairs, maintenance or other work to the Walkway which may disrupt public travel along the Highway and, except in the case of an emergency, the Owner shall only undertake such work at those times and dates and under those conditions authorized by the City, acting reasonably. In any event, the Owner shall use all reasonable efforts to minimize disruption and inconvenience to the public and where necessary for public safety, the Owner shall place and maintain flag persons, warning signs, barricades, lights and flares as will give clear warning and protection to the public on the Highway.

No Termination for Default

15. In the event that the Owner breaches any term, condition, covenant or provision of this Agreement, the Owner shall remedy the breach within 15 days of receipt of a notice from the City (or such longer time reasonably required to remedy the said breach if it cannot be remedied in such 15 day period) and if the breach is not remedied to the satisfaction of the City within the time specified, the parties agree that, due to the essential nature of the Walkway, this Agreement will not be terminated for default, but the City may apply to court for a remedy in the form of injunction, damages, or other legal remedy to enforce compliance by the Owner of its obligations pursuant to this Agreement.

Demolition or Destruction of Conference Centre Property

16. If the Conference Centre Property should reach the end of its life-span and the City chooses to demolish and not replace it, or if the Conference Centre Property should be substantially damaged or destroyed by earthquake, fire or other similar cause and the City chooses not to replace it, the City will:
- (a) remove the Walkway provided the City causes as little disruption as possible to the Hotel in connection with such removal; and
 - (b) undertake all work necessary to the Hotel to remedy any damage caused by removal of the Walkway to restore the Hotel to the state it was prior to construction of the Walkway;

and the Owner shall discharge this Easement from the Land Title Office.

Action by City

17. If the Owner fails to do any matter required of it under this Agreement, the City is entitled to take all such actions on the Owner's behalf and at the Owner's cost, and the Owner shall pay the City its costs immediately upon receipt of an invoice from the City, but the City is in no circumstance liable for its failure to do so or its manner of doing so.

Compensation

18. Except as set forth in section 16 of this Agreement, the Owner shall not be entitled to compensation for injurious affection or disturbance resulting in any way from the removal of the Walkway under section 16 and, without limitation, the Owner shall not be entitled to business losses, loss of profit, loss of market value, relocation costs or other consequential loss by reason of the removal of the Walkway or by reason of revocation of the permission to encroach granted under this Agreement under section 16.

Acknowledgement of Highway

19. The Owner acknowledges and agrees that a portion of the Easement Area is a highway and that this Agreement shall not in any way restrict the right of the City to at any time:
- (a) improve, maintain, widen, raise, lower or otherwise alter the Highway;
 - (b) inspect, install, improve, maintain, alter or permit any structure, service or utility on, over or under any portion of the Highway; or
 - (c) permit other encroachments or use of the Highway

provided there is no material detrimental effect to the Walkway and there is no material disruption to the Owner's operation of the Hotel.

Compliance with Laws

20. The Owner shall carry on and conduct its activities on the Easement Area in compliance with any and all applicable statutes, enactments, bylaws, regulations and orders from time to time in force and obtain and maintain all required approvals, permits and licenses thereunder and not to do or omit to do anything upon or from the Easement Area in contravention thereof.

Discharge of Agreement

21. Upon the expiry or other termination of this Agreement, the Owner shall execute and file in the Land Title Office a discharge of this Easement.

Release of Liability

22. The Owner hereby releases the City and its elected officials, officers, employees and agents (the "City Representatives") from all claims, demands, losses and costs which the Owner may at any time incur or suffer due to or related to or arising from the existence or use of the Walkway or Easement Area or the granting of this Agreement or any act or omission of the City or the City Representatives pursuant to this Agreement UNLESS liability to the Owner is caused by the negligent or deliberate wrongful acts of the City, City Representatives or those for whom the City is responsible at law.

Indemnity

23. The Owner hereby indemnifies and saves harmless the City and the City Representatives from all actions, proceedings, claims, demands, debts, damages, losses, costs and other harm of whatever kind which may at any time be suffered or incurred by the City or the City Representatives by reason of, arising from or in any way relating to the existence or use of the Walkway or Easement Area, the granting of this Agreement, or the acts, omissions, negligence or default (including breach of bylaws) of the Owner or its

directors, officers, employees, tenants, invitees, guests, contractors, licensees, agents and others for whom it is responsible unless caused by the negligence or deliberate wrongful acts of the City, City Representatives or those for whom the City is responsible at law.

24. The obligation of the Owner to release and indemnify the City and the City Representatives survives any expiry or termination of this Agreement.

Insurance

25. The Owner shall take out and maintain at all times throughout the term of this Agreement a policy of comprehensive general liability insurance providing coverage for all potential losses under this Agreement (including death, bodily injury, property loss, property damage, consequential and economic losses), in an amount of not less than Five Million (\$5,000,000.00) Dollars per occurrence, or such greater amount as the City may require from time to time, which policy names the City as an additional insured, a term of which policy will be (if possible) that it cannot be cancelled or altered without prior notice to the City, and which policy waives all rights of subrogation, a copy of which policy (or certificate of insurance) must be delivered to the City at the time of execution of this Agreement and at other times required by the City.

Entire Agreement

26. This Agreement is the entire agreement between the City and the Owner in respect of its specific subject matter.

No Representations

27. The City has made no representations, warranties, guarantees, promises, covenants or agreements to or with the Owner in respect of the particular subject-matter of this Agreement other than those expressed in writing in this Agreement.

Amendment

28. No amendment to this Agreement is valid unless in writing and executed by the parties.

Interpretation

29. In this Agreement:
- (a) wherever the singular or masculine is used the same shall be construed as meaning the plural or the feminine or the body corporate or politic where the context or the parties hereto so require;
 - (b) every reference to a party is deemed to include heirs, executors, administrators, successors, assigns, officers and employees of such parties wherever the context

so requires or allows; and

- (c) the headings are inserted for reference and convenience only and must not be used to construe or interpret the provisions hereof.

Covenants

- 30. All provisions of this Agreement are to be construed as covenants.

Time

- 31. Time is of the essence of this Agreement.

Interest in Land

- 32. This Agreement shall charge the Highway and the burden of all the covenants herein shall run with the Highway and charge the Highway and every part into which the Highway may be divided or subdivided.

Modification

- 33. This Agreement may not be modified except by an instrument in writing signed by the parties.

Waiver

- 34. Waiver of any default by any party will not be deemed to be a waiver of any subsequent default by that party. All waivers must be in writing.

Powers Preserved

- 35. Nothing contained or implied herein shall prejudice or affect the rights and powers of the City in the exercise of its functions pursuant to the *Local Government Act*, (B.C.) or the *Community Charter* (B.C.) or its rights and powers under all of its public and private statutes, bylaws, orders and regulations.

Notice

- 36. Any notice which may be given pursuant to this Agreement must be in writing and delivered by hand and addressed to the applicable party at its address set out above, or to such other address as the party may specify by notice in writing to the other in accordance with this section.
A notice will be deemed to be given on the day of delivery.

All notices to the City must be addressed to the attention of the City's Corporate Officer.

Governing Law

37. This Agreement will be governed by and construed in accordance with the laws in force in the Province of British Columbia.

Invalidity

38. If any section, subsection, sentence, clause or phrase in this Agreement is for any reason held to be invalid by the decision of a court of competent jurisdiction, the invalid portion will be severed and the decision that it is invalid will not affect the validity of the remainder of this Agreement.

Further Assurances

39. The parties shall do and cause to be done all things and execute and cause to be executed all documents that may be necessary to give proper effect to the intention of this Agreement.

Joint and Several

40. If at any time more than one person (as defined in the *Interpretation Act* (British Columbia) owns the Land, each of those persons will be jointly and severally liable for all of the obligations of the Owner under this Agreement.

Enurement

41. This Agreement will enure to the benefit of and be binding on the parties and their respective corporate successors, successors in title, heirs, executors, administrators, and personal representatives, notwithstanding any rule of law or equity to the contrary.

Interest

42. All monies owing and unpaid by the Owner to the City under this Agreement will bear interest at the rate of 6% per annum, compounded and calculated semi-annually not advance.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the Form C above.

EXPLANATORY PLAN OF VOLUMETRIC EASEMENT OF PART OF
 THAT PART OF GORDON STREET BEING PART OF ROAD
 DEDICATED BY PLAN 584 AS SHOWN ON PLAN EPP _____ AND
 PART OF LOT A SECTION 1 PLAN VIP79754 EXCEPT THAT PART IN PLAN VIP85148
 ALL OF THE BED OF THE PUBLIC HARBOUR OF NANAIMO, NANAIMO DISTRICT
 PURSUANT TO SECTION 99(1)(a) OF THE LAND TITLE ACT.
 BCGS 926.011

0 20 40
 SCALE 1 : 400 DISTANCES ARE IN METRES
 THE INTENDED PLOT SCALE OF THIS PLAN IS 560 mm
 IN WIDTH BY 432 mm IN HEIGHT (C SIZE) WHEN
 PLOTTED AT A SCALE OF 1:400.

INTEGRATED SURVEY AREA NO.20
 CITY OF NANAIMO NAD83(CSRS)
 GRID BEARINGS ARE DERIVED FROM REFERENCE PLAN EPP _____

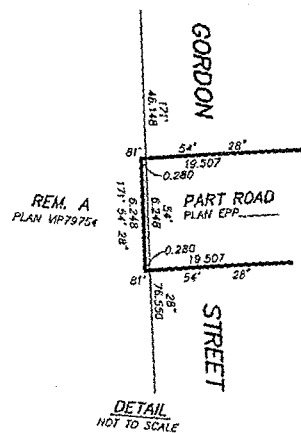
LEGEND

m² DENOTES SQUARE METRES
 m³ DENOTES CUBIC METRES

ELEVATION DERIVATION

ELEVATIONS ARE DERIVED FROM CITY OF NANAIMO CONTROL MONUMENT
 No. 77H5007 ELEVATION=10.44m CVD288C 2010 ADJ DATUM
 SITUATED ON CAMERON STREET APPROXIMATELY 125 METRE EAST OF THE GORDON STREET

BOOK OF REFERENCE		
DESCRIPTION	AREA	VOLUME
PART OF GORDON STREET PLAN EPP _____	121.9 m ²	780 m ³
PART OF REM. A PLAN VIP79754	1.7 m ²	11.2 m ³
TOTALS	123.6 m ²	89.2 m ³



COORDINATE TABLE			
POINT NUMBER	NORTHING	EASTING	ELEVATION
100	963.345	878.361	10.82
101	963.387	878.639	10.82
102	963.133	897.652	10.82
103	959.947	898.831	10.82
104	957.201	878.518	10.82
105	957.162	878.241	10.82
106	963.348	878.361	17.22
107	963.387	878.639	17.22
108	966.133	897.652	17.22
109	969.947	898.831	17.22
110	957.201	878.518	17.22
111	957.162	878.241	17.22

DRAFT OCTOBER 18th, 2013

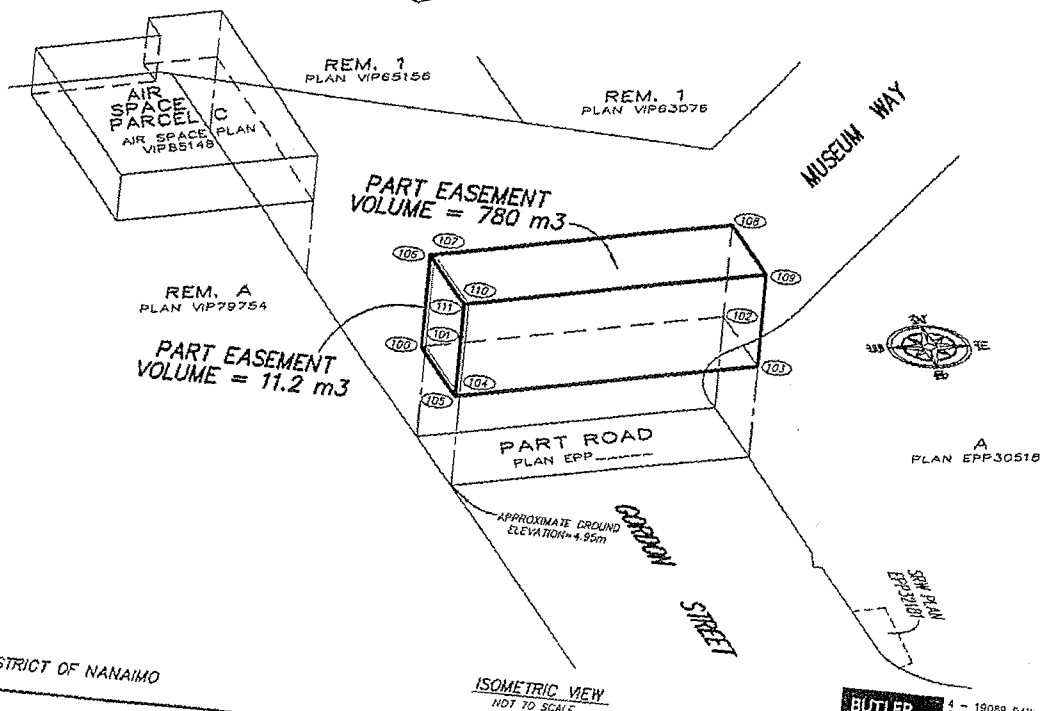
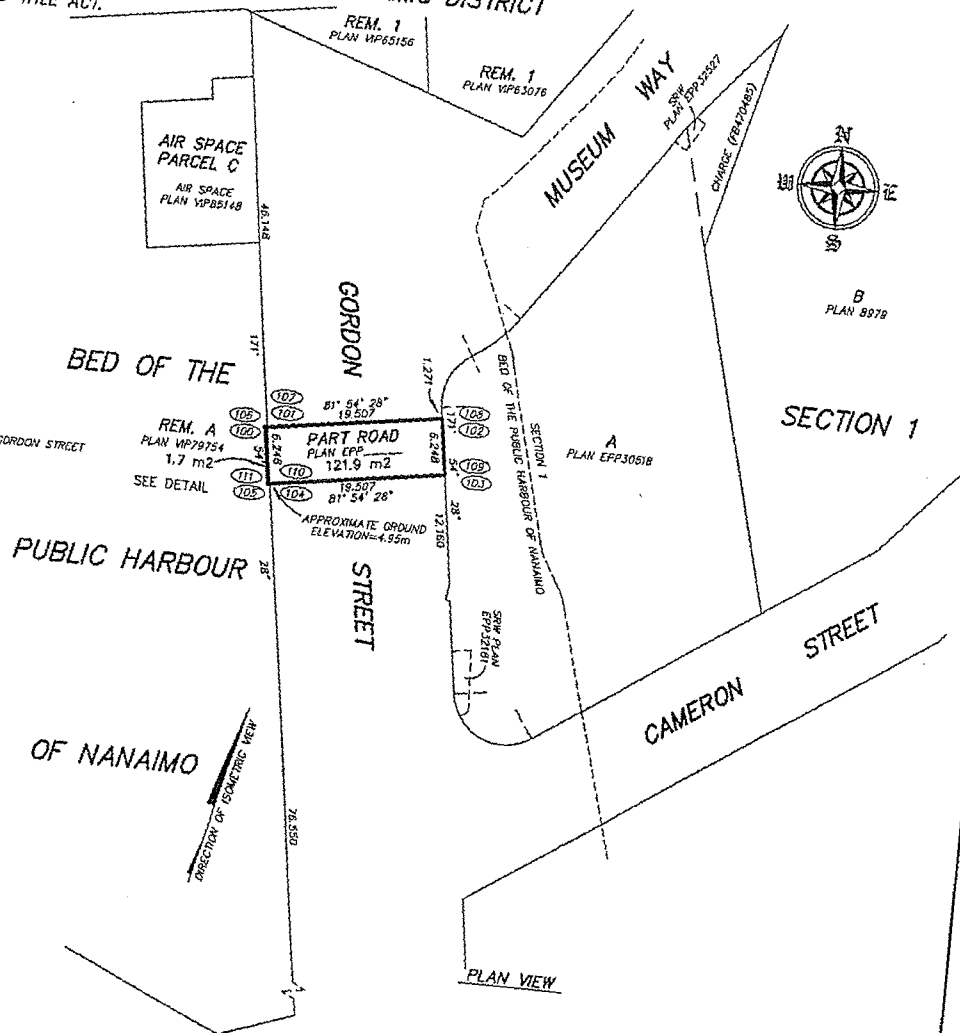
THE PLAN IS BASED ON THE FOLLOWING LAND TITLE
 AND SURVEY AUTHORITY OF BC RECORDS:

REFERENCE PLAN EPP _____
 GARY SUNDVICK, BOLS (637)
 ____th DAY OF _____, 2013
 ECH/

THIS PLAN LIES WITHIN THE REGIONAL DISTRICT OF NANAIMO

END OF DOCUMENT

PLAN EPP _____



BUTLER
 SUNDVICK
 4 - 19089 54th Ave
 Surrey, BC V4N 3S4
 www.butlersundvick.ca
 Tel. 604-513-9611
 File: 4402
 Dwg: 4402-Vol

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)

KAHN ZACK EHRLICH LITHWICK LLP
270 - 10711 Cambie Road
Richmond BC V6X 3G5

Telephone: (604) 270-9571
LTO Client No. 011757
File No. 46320

Deduct LTSA Fees? Yes ☒

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

005-496-497 LOT B SECTION 1 NANAIMO DISTRICT PLAN 8979

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):

CITY OF NANAIMO

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

SSS MANHAO INTERNATIONAL TOURISM GROUP (CANADA) CO. LTD.

SUITE 270, 10711 CAMBIE ROAD

RICHMOND

V6X 3G5

BRITISH COLUMBIA

CANADA

Incorporation No

BC0953560

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)

Execution Date		
Y	M	D

Transferor(s) Signature(s)

CITY OF NANAIMO by its
authorized signatory(ies):

Mayor:

Corporate Officer:

(as to all signatures)

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.

Signature(s)

MICHAEL L. LIPTON
Barrister & Solicitor
270-10711 CAMBIE ROAD
RICHMOND, BRITISH COLUMBIA
V6X 3G5 604-270-9571

(as to all signatures)

Execution Date

Y	M	D
---	---	---

13	10	21
----	----	----

Transferor / Borrower / Party Signature(s)

SSS MANHAO INTERNATIONAL
TOURISM GROUP (CANADA) CO.
LTD. by its authorized signatory(ies):

Name: _____

Name:

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.

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

Easement

Dominant Land: PID 029-126-002
Lot A Section 1 Nanaimo City and of the Bed of the
Public Harbour of Nanaimo Plan EPP30518

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

TERMS OF INSTRUMENT – PART 2

EASEMENT FOR CONNECTION TO PIPER PARK

This Agreement dated for reference the 21st day of October, 2013

BETWEEN:

SSS MANHAO INTERNATIONAL TOURISM GROUP (CANADA) CO. LTD., a company duly incorporated under the laws of the Province of British Columbia having its registered and records office care of Suite 270, 10711 Cambie Road, Richmond, British Columbia V6X 3G5

(the "Owner")

OF THE FIRST PART

AND:

CITY OF NANAIMO, a municipality incorporated under the laws of the Province of British Columbia and having an address at 455 Wallace Street, Nanaimo, British Columbia, Canada V9R 5J6

(the "City")

OF THE SECOND PART

WHEREAS:

- A. Pursuant to an Offer to Purchase between Manhao and the City dated for reference June 19, 2013 (the "Offer to Purchase"), Manhao agreed to purchase from the City for the purpose of developing and operating a hotel (the "Hotel") certain land situated at 100 Gordon Street, Nanaimo, British Columbia, and legally described as:

Parcel Identifier: 029-126-002
Lot A Section 1 Nanaimo City and of the Bed of the Public Harbour of
Nanaimo Plan EPP30518

(the "Land");

- B. The City is the owner in fee simple of that adjacent property to the Land commonly known as Piper Park, which is legally described as:

Parcel Identifier: 005-496-497
Lot B, Section 1, Nanaimo District, Plan 8979

("Piper Park");

- C. Pursuant to the Offer to Purchase, the City's sale of the Land and Manhao's purchase of the Land is subject to Manhao's construction of a connection between Piper Park and the Hotel (the "Connection") in order to provide guests of the Hotel, users of Piper Park and the public generally free access between the Hotel and Piper Park;
- D. By this Agreement and on the terms of this Agreement, the City is prepared to grant to the Owner an easement to permit the Owner to construct and use the Connection between the Hotel and Piper Park;

NOW THEREFORE this Agreement is evidence that in consideration of the mutual covenants contained herein, the payment of \$1.00 by the Owner to the City and other good and valuable consideration (the receipt and sufficiency of which is acknowledged by each of the parties), the City and Owner covenant and agree as follows:

Permission to Encroach

- 1. The City hereby grants to the Owner the non-exclusive right, license, liberty, easement, privilege and permission (the "Easement") to encroach upon Piper Park (the "Easement Area") for the sole purpose of constructing, maintaining, repairing, replacing, occupying, and using the Connection on the terms and conditions of this Agreement.

Use of Connection

- 2. The City grants the Easement to the Owner on the condition that the Owner must permit the Connection to be used to provide guests, employees and others using the Hotel, and users of Piper Park, including members of the public, free access across and along the Connection between the Hotel and Piper Park.
- 3. For certainty, the Owner may not use the Connection for any purpose¹ other than pedestrian access between the Hotel and Piper Park.

Extent and Reduction of Easement Area

- 4. The Owner agrees and acknowledges that despite the grant in Section 1 of a blanket easement over Piper Park, the Connection must be constructed in accordance with section 5 on and over the Land and a small portion of Piper Park and the Owner and the City agree as follows:
 - (a) upon completion of construction of the Connection, the Owner shall cause a British Columbia Land Surveyor to prepare a reference or explanatory plan (the "Plan") showing an easement area of those parts of Piper Park required for the ongoing operation and maintenance of the Connection, with the easement area being of size and dimension reasonably required by the Owner for the purposes of the Easement;

- (b) the Plan prepared under this section 4 must be delivered to the City for review and approval for the purposes of this section and the Owner must cause such changes to the Plan to be made as the City, acting reasonably, considers necessary for the purposes of the Easement;
- (c) once the Plan provided for in this section has been approved by the City under section 4(b), the Owner must cause the approved Plan to be deposited in the Land Title Office and the Owner must, within a reasonable time after request by the City, execute and deliver to the City a discharge or modification of the Easement from any part of Piper Park that is not shown as part of the Easement Area on the approved Plan; and
- (d) upon deposit of the discharge or modification of the Easement in the Land Title Office, reference herein to the Easement Area is a reference to the easement area shown on the approved Plan.

For certainty, if, upon completion of construction of the Connection, the reference or explanatory plan obtained in accordance with section 4(a) reveals that no part of the Connection is located on Piper Park, the Owner must, within a reasonable time after request by the City, execute and deliver to the City a full discharge of this Easement from Piper Park.

Design of Connection

- 5. The Owner shall construct the Connection in strict accordance with the design prepared by gBL Architects, a copy of which is attached to Development Permit 854 (approved by City Council on October 7, 2013), which design, among other things, specifies the dimensions of the Connection, the height of the Connection above ground, the building materials and structural components of the Connection.

Term of Easement

- 6. This Easement commences on the date of its registration in the Land Title Office and continues until such time as the Hotel is intentionally demolished or the Hotel is demolished by earthquake, fire or other similar cause and the Owner chooses not to reconstruct the Hotel, and in that case, the Owner shall:
 - (a) remove the Connection;
 - (b) restore Piper Park to the state it was in at the time of the signing of this Agreement; and
 - (c) discharge this Easement from the Land Title Office.

Ownership of Connection

7. The Owner and City agrees that, despite any rule of law or equity, the Connection belongs at all times to the Owner.

Owner Responsibility

8. The Owner is solely responsible for all aspects of the Connection, including repair, maintenance, cleaning, clearing, replacement, safety, security, inspection, utilities and other matters specified in this Agreement.

Standard to be Met

9. The Owner shall at all times repair, maintain, clean, clear, replace, operate, inspect and keep the Connection in good condition and repair, reasonable wear and tear excepted, that ensures the safe passage of the public across and along the Connection.

Security

10. The Owner is responsible for all aspects of security of the Connection and the Owner may employ security cameras, security guards and other measures to ensure the safety of those using the Connection.

Hours of Opening

11. The Owner may by a system of gates or otherwise prohibit access across and along the Connection from dusk until dawn.

Cleaning

12. The Owner shall clean the Connection and remove all rubbish and debris on a regular basis. The Owner shall have no responsibility for cleaning Piper Park.

Costs

13. The Owner shall be responsible for all costs, payments, outlays and expenses with respect to the Connection and this Agreement, including those associated with engineering, survey, legal, insurance, construction, maintenance, repair, removal, replacement, inspection, cleaning, security, utilities, or servicing, unless any of the aforesaid costs, payments, outlays or expenses are caused by the negligence or deliberate wrongful acts of the City or those for whom the City is responsible at law.

Required Repairs

14. The City may at any time inspect the Connection and the Owner shall conduct any repairs or maintenance to the Connection as directed by the City, acting reasonably, if

the Owner is in breach of its obligations pursuant to section 9. Despite the fact that the City may require repairs to the Connection, the City is not responsible for the condition or safety of the Connection and the City is not required to give any notices to repair.

Disruption of Public Travel

15. The Owner shall give the City notice of its intention to undertake any repairs, maintenance or other work to the Connection which may disrupt public use of Piper Park and, except in the case of an emergency, the Owner shall only undertake such work at those times and dates and under those conditions authorized by the City. In any event, the Owner shall use all reasonable efforts to minimize disruption and inconvenience to the public using Piper Park and where necessary for public safety, the Owner shall place and maintain warning signs, barricades, lights and flares as will give clear warning and protection to the public using Piper Park.

No Termination for Default

16. In the event that the Owner breaches any term, condition, covenant or provision of this Agreement, the Owner shall remedy the breach within 15 days of receipt of a notice from the City (or such longer time reasonably required to remedy the said breach if it cannot be remedied in such 15 day period) and if the breach is not remedied to the satisfaction of the City within the time specified, the parties agree that, due to the essential nature of the Connection, this Agreement will not be terminated for default, but the City may apply to court for a remedy in the form of injunction, damages, or other legal remedy to enforce compliance by the Owner of its obligations pursuant to this Agreement.

Action by City

17. If the Owner fails to do any matter required of it under this Agreement, the City is entitled to take all such actions on the Owner's behalf and at the Owner's cost, and the Owner shall pay the City its costs immediately upon receipt of an invoice from the City, but the City is in no circumstance liable for its failure to do so or its manner of doing so.

Compensation

18. Notwithstanding any provision of this Agreement, the Owner shall not be entitled to compensation for injurious affection or disturbance resulting in any way from the removal of the Connection under section 6 and, without limitation, the Owner shall not be entitled to business losses, loss of profit, loss of market value, relocation costs or other consequential loss by reason of the removal of the Connection under section 6.

Acknowledgement of Use as Park

19. The Owner acknowledges and agrees that the Easement Area is used as a public park and that this Agreement shall not in any way restrict the right of the City to at any time:

- (a) improve, maintain, or otherwise alter Piper Park;
- (b) inspect, install, improve, maintain, alter or permit any structure, service or utility on, over or under any portion of Piper Park; or
- (c) permit other encroachments or use of Piper Park,

provided there is no material detrimental effect on the Connection and there is no material disruption to the Owner's operation of the Hotel.

Compliance with Laws

20. The Owner shall carry on and conduct its activities on the Easement Area in compliance with any and all applicable statutes, enactments, bylaws, regulations and orders from time to time in force and obtain and maintain all required approvals, permits and licenses thereunder and not to do or omit to do anything upon or from the Easement Area in contravention thereof.

Discharge of Agreement

21. Upon the expiry or other termination of this Agreement, the Owner shall execute and file in the Land Title Office a discharge of this Easement.

Release of Liability

22. The Owner hereby releases the City and its elected officials, officers, employees and agents (the "City Representatives") from all claims, demands, losses and costs which the Owner may at any time incur or suffer due to or related to or arising from the existence or use of the Connection or Easement Area or the granting of this Agreement or any act or omission of the City or the City Representatives pursuant to this Agreement unless caused by the negligence or deliberate wrongful acts of the City, the City Representatives or those for whom the City is responsible at law.

Indemnity

23. The Owner hereby indemnify and save harmless the City and the City Representatives from all actions, proceedings, claims, demands, debts, damages, losses, costs and other harm of whatever kind which may at any time be suffered or incurred by the City of the City Representatives, by reason of, arising from or in any way relating to the existence or use of the Connection or Easement Area, the granting of this Agreement, or the acts, omissions, negligence or default (including breach of bylaws) of the Owner or its directors, officers, employees, tenants, invitees, guests, contractors, licensees, agents and others for whom it is responsible unless caused by the negligence or deliberate wrongful acts of the City, the City Representatives or those for whom the City is responsible at law.

24. The obligation of the Owner to release and indemnify the City and the City Representatives survives any expiry or termination of this Agreement.

Insurance

25. The Owner shall take out and maintain at all times throughout the term of this Agreement a policy of comprehensive general liability insurance providing coverage for all potential losses under this Agreement (including death, bodily injury, property loss, property damage, consequential and economic losses), in an amount of not less than Five Million (\$5,000,000.00) Dollars per occurrence, or such greater amount as the City may require from time to time, which policy names the City as an additional insured, a term of which policy will (if possible) be that it cannot be cancelled or altered without prior notice to the City, and which policy waives all rights of subrogation, a copy of which policy (or certificate of insurance) must be delivered to the City at the time of execution of this Agreement and at other times required by the City.

Entire Agreement

26. This Agreement is the entire agreement between the City and the Owner in respect of its specific subject-matter and nothing in the Agreement affects the Offer to Purchase or any other agreement between the City and the Owner.

No Representations

27. The City has made no representations, warranties, guarantees, promises, covenants or agreements to or with the Owner in respect of the particular subject-matter of this Agreement.

Amendment

28. No amendment to this Agreement is valid unless in writing and executed by the parties.

Interpretation

29. In this Agreement:
- (a) wherever the singular or masculine is used the same shall be construed as meaning the plural or the feminine or the body corporate or politic where the context or the parties hereto so require;
 - (b) every reference to a party is deemed to include heirs, executors, administrators, successors, assigns, officers and employees of such parties wherever the context so requires or allows; and
 - (c) the headings are inserted for reference and convenience only and must not be used to construe or interpret the provisions hereof.

Covenants

30. All provisions of this Agreement are to be construed as covenants.

Time

31. Time is of the essence of this Agreement.

Interest in Land

32. This Agreement shall charge Piper Park and the burden of all the covenants herein shall run with Piper Park and charge Piper Park and every part into which Piper Park may be divided or subdivided.

Waiver

33. Waiver of any default by any party will not be deemed to be a waiver of any subsequent default by that party. All waivers must be in writing.

Powers Preserved

34. Nothing contained or implied herein shall prejudice or affect the rights and powers of the City in the exercise of its functions pursuant to the *Local Government Act*, (B.C.) or the *Community Charter* (B.C.) or its rights and powers under all of its public and private statutes, bylaws, orders and regulations.

Notice

35. Any notice which may be given pursuant to this Agreement must be in writing and delivered by hand and addressed to the applicable party at its address set out above, or to such other address as the party may specify by notice in writing to the other in accordance with this section.

A notice will be deemed to be given on the day of delivery.

All notices to the City must be addressed to the attention of the City's Corporate Officer.

Governing Law

36. This Agreement will be governed by and construed in accordance with the laws in force in the Province of British Columbia.

Invalidity

37. If any section, subsection, sentence, clause or phrase in this Agreement is for any reason held to be invalid by the decision of a court of competent jurisdiction, the invalid

portion will be severed and the decision that it is invalid will not affect the validity of the remainder of this Agreement.

Further Assurances

38. The parties shall do and cause to be done all things and execute and cause to be executed all documents that may be necessary to give proper effect to the intention of this Agreement.

Joint and Several

39. If at any time more than one person (as defined in the *Interpretation Act* (British Columbia) owns the Land, each of those persons will be jointly and severally liable for all of the obligations of the Owner under this Agreement.

Enurement

40. This Agreement will enure to the benefit of and be binding on the parties and their respective corporate successors, successors in title, heirs, executors, administrators, and personal representatives, notwithstanding any rule of law or equity to the contrary.

Interest

41. All monies owing and unpaid by the Owner to the City under this Agreement will bear interest at the rate of 6% per annum, compounded and calculated semi-annually, not advance.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the Form C above.

END OF DOCUMENT

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)

KAHN ZACK EHRlich LITHWICK LLP
270 - 10711 Cambie Road
Richmond BC V6X 3G5

Telephone: (604) 270-9571
LTO Client No. 011757
File No. 46320

Deduct LTSA Fees? Yes ☒

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

029-126-002 LOT A SECTION 1 NANAIMO DISTRICT AND OF THE BED OF THE PUBLIC HARBOUR OF NANAIMO PLAN EPP30518

STC? YES ☐

3. NATURE OF INTEREST CHARGE NO. ADDITIONAL INFORMATION

Option to Purchase

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):

SSS MANHAO INTERNATIONAL TOURISM GROUP (CANADA) CO. LTD. (INC. NO. BC0953560)

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

CITY OF NANAIMO

A MUNICIPAL CORPORATION INCORPORATED UNDER THE LOCAL GOVERNMENT ACT

455 WALLACE STREET

Incorporation No

NANAIMO

BRITISH COLUMBIA

N/A

V9R 5J6

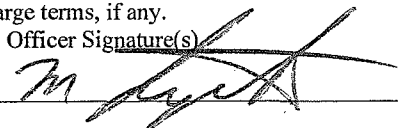
CANADA

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)



MICHAEL L. LIPTON
Barrister & Solicitor
270-10711 CAMBIE ROAD
RICHMOND, BRITISH COLUMBIA
V6X 3G5 604-270-9571

Execution Date

Y	M	D
13	10	21

Transferor(s) Signature(s)

SSS MANHAO INTERNATIONAL TOURISM GROUP (CANADA) CO. LTD. by its authorized signatory (ies):



Name:

Name:

(as to all signatures)

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.

Officer Signature(s)

Execution Date

Transferor / Borrower / Party Signature(s)

Y

M

D

CITY OF NANAIMO by its authorized
signatory(ies):

Mayor:

Corporate Officer:

(as to all signatures)

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.

TERMS OF INSTRUMENT – PART 2

OPTION TO PURCHASE

THIS OPTION AGREEMENT dated for reference October 21, 2013 is

BETWEEN:

SSS MANHAO INTERNATIONAL TOURISM GROUP (CANADA) CO. LTD., a company duly incorporated under Incorporation Number BC0953560 pursuant to the provisions of the *Business Corporations Act*, SBC 2002, c 57, having its registered office at Suite 270, 10711 Cambie Road, Richmond, British Columbia V6X 3G5

(the "Owner")

AND:

CITY OF NANAIMO, a British Columbia local government, having its administrative offices at 455 Wallace Street, Nanaimo, British Columbia V9R 5J6

(the "City")

GIVEN THAT:

- A. Pursuant to an Offer to Purchase between Manhao and the City dated for reference June 19, 2013 (the "Offer to Purchase"), Manhao agreed to purchase from the City for the purpose of developing and operating a hotel (the "Hotel") certain land situated at 100 Gordon Street, Nanaimo, British Columbia, and legally described as:

Parcel Identifier: 029-126-002
Lot A Section 1 Nanaimo District and of the Bed of the Public Harbour of
Nanaimo Plan EPP30518

(the "Land");

- B. Pursuant to the terms of the Offer to Purchase, the City's sale of the Land and Manhao's purchase of the Land is subject to the parties agreeing to and entering into this Option to Purchase.

THIS OPTION AGREEMENT is evidence that in consideration of the transfer of the Land from the City to the Owner, payment of \$1.00 paid by the City to the Owner, and other good and valuable consideration (the receipt and sufficiency of which the Owner hereby expressly acknowledges), the Owner and the City covenant and agree as follows:

Grant of Option

1. The Owner hereby grants to the City the sole and exclusive option (the "Option"), irrevocable within the time herein limited for exercise by the City, to purchase the Land free and clear of all liens, charges and encumbrances, except for the Permitted Encumbrances (as hereinafter defined).

Manner of Exercise of Option

2. The City may exercise the Option at any time until 12:00 midnight on November 20, 2015, by delivering notice of the exercise of the Option to the Owner. The date the City provides notice of its exercise of the Option to the Owner is referred to herein as the "Option Exercise Date".

Commencement of Hotel Construction

3. Notwithstanding sections 1 and 2, the City may exercise the Option only if the Owner has not, on or before May 20, 2015:
 - (a) obtained a foundation permit from the City for the Hotel;
 - (b) constructed the foundations for the Hotel; and
 - (c) obtained a final inspection of the foundations from the City.

Meaning of Force Majeure

4. For the purposes of this Option Agreement, the expression "force majeure" shall mean labour disruption, act of God, power failure, inability to obtain materials or services, riot, insurrection, war, acts of terrorism, or other similar casualty or contingency beyond the reasonable control and not the fault of the party delayed and not avoidable by the exercise of reasonable diligence or foresight, but excluding insolvency or other inability to pay.

Extension of Dates if Force Majeure

5. If, by reason of Force Majeure, the Owner is delayed in obtaining a foundation permit from the City for Hotel, constructing the foundations for the Hotel, or obtaining a final inspection of the foundation from the City, then the date of May 20, 2015 in section 3 is extended for the duration of the delay, and the date in section 2 for the City to exercise the Option, namely November 20, 2015, is also extended by the duration of the delay.

Limitation On Further Encumbrances

6. The Owner must not grant any easement, covenant, utility right of way to a utility company or other restrictive charge on or in the Land, and the Owner must not permit

to be registered on title or to remain registered any lien, judgement, caveat, certificate of pending litigation, or similar charge whatsoever, without the prior written consent of the City, such consent not to be unreasonably refused or delayed. Notwithstanding the foregoing, the Owner may grant a mortgage without the prior written consent of the City provided that the mortgagee as the case may be executes a postponement agreement to this Option Agreement, with a legal commitment to the City that the mortgagee will not dispute the rights of the City to registration free of the mortgage pursuant to section 242 of the *Land Title Act*, to be registered concurrently with the said mortgage.

Non-Exercise of Option

7. If the Option is not exercised by the City within the time and in the manner set forth in section 2 or if the Owner complies with the matters set forth in sections 3(a), (b), and (c), the Option and this Option Agreement shall be null, void and of no further force or effect and the City will, on request by the Owner, execute a release of this Option Agreement so as to discharge this Option from title to the Land, which release shall be prepared by the City and registered by and at the expense of the Owner.

Binding Agreement

8. If the City exercises the Option within the time and in the manner provided, there will be created a binding and unconditional agreement for the purchase and sale of the Land (the "Agreement"), which shall be completed upon the following terms and conditions.

Purchase Price

9. The purchase price for the Land (the "Purchase Price") shall be \$565,000.00, plus Goods and Services Tax ("GST"), if applicable.

Completion Date

10. The purchase and sale of the Land shall complete on the date that is 30 days after the Option Exercise Date (the "Completion Date"), unless that day is not a Business Day, in which case the date for completion shall be the next following business day, or the Completion Date may be another date agreed to by the City and Owner. In this Option Agreement, "Business Day" means a day other than a Saturday, Sunday or statutory holiday in British Columbia.

Permitted Encumbrances

11. In this Option Agreement, "Permitted Encumbrances" means, in respect of the Land:
 - (a) the exceptions and reservations contained in the original Crown grant;

(b) Legal Notations:

- (i) Subject to Exceptions and Reservations contained in Order-In-Council filed D.D. 3570631 as to those parts shown outlined in red on Plan 610 B.L.;
- (ii) Hereto is Annexed Easement EL62151 over Lot 1, Plan VIP65156 Except Parts in Air Space Plans VIP65336 and VIP65337 – Easement EL62151 modified by EM44694 (as to part formerly Lot 1, Plan VIP79756);
- (iii) Hereto is Annexed Easement EL62152 over Lot 1, Plan VIP65156 Except Parts in Air Space Plans VIP65336 and VIP65337 – Easement EL62152 modified by EM44695 (as to part formerly Lot 1, Plan VIP79756);
- (iv) Hereto is Annexed Party Wall Agreement EL62160 Lot 1, Plan VIP65156 Except Parts in Air Space Plans VIP65336 and VIP65337 (as to part formerly Lot 1, Plan VIP79756);
- (v) Notice of Development Permit issued for the Hotel;

(c) Charges, Liens and Interests:

- (i) Exceptions and Reservations M76300 in favour of Esquimalt and Nanaimo Railway Company;
- (ii) Undersurface Rights M76301 in favour of the Province of B.C.;
- (iii) Undersurface and Other Exceptions & Reservations EJ85580 in favour of the Province of B.C.;
- (iv) Exceptions and Reservations EX134762 in favour of the Province of B.C.;
- (v) Statutory Right of Way EX134776 in favour of BC Hydro;
- (vi) Covenant FB155911 in favour of the City;
- (vii) Undersurface and Other Exceptions & Reservations FB470485 in favour of the Province of B.C.;
- (viii) Statutory Right of Way CA3244234 in favour of BC Hydro;
- (ix) Statutory Right of Way CA3244235 in favour of Telus;
- (x) Statutory Right of Way CA3244237 in favour of Shaw Cable;
- (xi) Statutory Right of Way CA3244239 in favour of the City;
- (xii) Development Covenant between the Owner and the City dated October 21,

2013;

- (xiii) Walkway Easement, as defined in the Offer to Purchase; and
- (xiv) Connection Easement, as defined in the Offer to Purchase; and
- (xv) Rights of way permitted under section 6.

City GST Certificate

12. The City will give the Purchaser a certificate, in the form attached as Schedule "A" (the "City's GST Certificate"), confirming that the City is registered for GST purposes under the *Excise Tax Act* (Canada) and confirming that the City will remit directly all GST payable in respect of the transfer and conveyance of the Land to the City.

Title and Possession

13. On the Completion Date, the Owner will:
 - (a) convey the estate in fee simple of the Land to the City free and clear of all liens, charges and encumbrances except for the Permitted Encumbrances; and
 - (b) give vacant possession of the Land to the City, subject only to the Permitted Encumbrances.

Adjustments

14. There will be no adjustments to the Purchase Price for items typically adjusted between vendors and purchasers such as property taxes.

Condition

15. Subject to section 20, on the Completion Date, the City will accept the Land on an "as is" condition, whether the Land has been completely or partially cleared, or graded, or excavated, or foundation forms constructed or fully or partially poured, but the Owner must leave the Land in a safe and clean condition, with hoarding constructed if necessary, and clear of any environmental contamination.

Site Profile

16. If required by the City and by the *Environmental Management Act*, the Owner must provide to the City prior to the Completion Date a completed site profile under the *Environmental Management Act* (the "Site Profile").

Environmental Terms – Delivery of Reports

17. The Owner shall promptly give the City, without charge, after the date of execution of

this Option Agreement, any survey or report or the results of any tests made to the Land, including without limitation, any environmental site assessments, made by or on behalf of the Owner, or other information in the possession or control of the Owner regarding the condition of the Land, whether or not the Option has been exercised and if it has, whether or not the sale of the Land is completed pursuant to the terms of this Option Agreement.

Reliance

18. It is understood and agreed by the Owner that any reports or information provided by the Owner to the City under section 17 shall form a basis for the City's decision whether or not to exercise the Option and purchase the Land in accordance with section 3 herein, and that the City will be relying on the reports and information provided by the Owner concerning the condition of the Land.

City Assumption of Liability

19. The City agrees that from and after the Completion Date, the City shall and hereby does assume all liabilities and obligations relating to the condition, environmental or otherwise, of the Land arising or caused before the Owner became the owner of the Land and arising or caused after the City becomes the owner of the Land. The liabilities of the City under this section include but are not limited to liability for remediation of the Land, for clean-up of any substance in, on or under the Land or in ground water or surface water in, on or under the Land, or for clean-up in, on or under any other lands of any substance migrating from or originating from the Land. The foregoing shall include, without limiting the generality of the foregoing, the assumption of all liabilities and obligations in relation to any and all of the following:
- (a) all liabilities and obligations imposed by statute, regulation, the exercise of discretion (as permitted by statute or regulation), lawful authority, regulatory order, common law or equity, in any manner whatsoever;
 - (b) all reclamation or remediation; and
 - (c) the taking of any action in any way related to the quality of soil vapour, surface water, groundwater, air or organisms.

Owner Assumption of Liability

20. The Owner agrees that from and after the Completion Date, the Owner shall and hereby does assume all liabilities and obligations relating to the condition, environmental or otherwise, of the Land caused during the time that the Owner was the owner of the Land. The liabilities of the Owner under this section include but are not limited to liability for remediation of the Land, for clean-up of any substance in, on or under the Land or in ground water or surface water in, on or under the Land, or for clean-up in, on

or under any other lands of any substance migrating from or originating from the Land. The foregoing shall include, without limiting the generality of the foregoing, the assumption of all liabilities and obligations in relation to any and all of the following:

- (a) all liabilities and obligations imposed by statute, regulation, the exercise of discretion (as permitted by statute or regulation), lawful authority, regulatory order, common law or equity, in any manner whatsoever;
- (b) all reclamation or remediation; and
- (c) the taking of any action in any way related to the quality of soil vapour, surface water, groundwater, air or organisms.

Remediation by Owner

21. In the event that the Option is exercised by the City, the Owner must before the Completion Date remove all contamination for which the Owner is responsible under section 20 and the Owner must remediate the Land to the satisfaction of the City, acting reasonably, and to standards established by law.

Releases of Liability

22. Each party agrees that from and after the Completion Date, each party hereby releases and discharges the other party and its past, present and future shareholders and affiliates, and each of their past, present and future respective directors, officers, employees, contractors and agents from and against any and all actions, claims, demands, liabilities, losses, damages and expenses whatsoever, direct or indirect incurred or suffered by the other party, including but not limited to those made or imposed or arising at any time by or from any third party or any lawful authority, in relation to all liabilities and obligations assumed by the party pursuant to section 19 or 20, respectively.

Indemnity by Each Party

23. Each party agrees that from and after the Completion Date, the party shall indemnify and save harmless the other party and its past, present and future shareholders and affiliates, and each of their past, present and future respective directors, officers, employees, contractors and agents from and against any and all actions, claims, demands, liabilities, losses, damages and expenses whatsoever, direct or indirect, incurred or suffered by the other party in relation to all liabilities and obligations assumed by the party pursuant to section 19 or 20, respectively and any default by the party in the performance or observance of any of the liabilities or obligations assumed by the party pursuant to section 19 or 20, respectively.

Survival

24. All of sections 17 to 23 inclusive shall survive the exercise of the Option and the transfer of the Lands from the Owner to the City.

Access

25. The City, by its contractors, agents and employees, has the licence, exercisable on 24 hours prior written notice to the Owner, to enter upon the Land from time to time until expiry of this Option or the Completion Date, whichever is later, at the City's sole risk and expense, for the purpose of making inspections, surveys, tests and studies of the Land, provided that there shall be no disruption to the Owner's use of or construction on the Land.

Owner Representations, Warranties and Covenants

26. The Owner hereby represents and warrants to the City that the following are true, and covenants with the City that the following will be true on the Completion Date:
- (a) if the Owner is a corporation, it is validly formed and existing under the laws of Canada or a Province of Canada and duly qualified to own and sell the Land;
 - (b) the Owner has full power, authority and capacity to enter into this Option Agreement and carry out the transactions contemplated herein;
 - (c) the Owner has taken all necessary or desirable actions, steps and other proceedings to approve and authorize, validly and effectively, the entering into, execution, delivery and performance of this Option Agreement;
 - (d) there is no action or proceeding pending, or to the Owner's knowledge threatened, against the Owner before any court, arbiter, arbitration panel, administrative tribunal or agency which, if decided adversely to the Owner, might materially affect the Owner's ability to perform its obligations hereunder;
 - (e) neither the Owner entering into this Option Agreement nor the performance of its terms will result in the breach of or constitute a default under any term or provision of any indenture, mortgage, deed of trust or other agreement to which the Owner is bound or subject; and
 - (f) the Owner is not a "non-resident" of Canada within the meaning of the *Income Tax Act* (Canada) and the Owner will give the City a statutory declaration in the form attached as Schedule "B" (the "Owner's Statutory Declaration") at least five (5) days prior to the Completion Date.

City Delivery of Closing Documents

27. No later than 5 days before the Completion Date, the City will deliver to the Owner the City's GST Certificate, in a form executed by the City, as well as:
- (a) a freehold transfer in registrable form transferring the estate in fee simple of the Land to the City (the "Transfer"), to be executed by the Owner;
 - (b) the Owner's Statutory Declaration, the form of which is attached hereto as Schedule "B", to be executed by the Owners; and
 - (c) such further deeds, acts, things, certificates and assurances as may be required in the reasonable opinion of the City's solicitors, for more perfectly and absolutely assigning, transferring, conveying and assuring to the City fee simple title to the Land free and clear of all liens, charges, and encumbrances, other than the Permitted Encumbrances.

Owner Return of Documents

28. Before the Completion Date, the Owner will deliver to the City or, if directed by the City, to the City's solicitors, the documents listed in section 27(a), (b) and (c) and the Site Profile, all duly executed by the Owner, on appropriate undertakings.

Completion

29. On the Completion Date, the City will apply or cause its solicitors to apply to the Land Title Office to register the Transfer and upon the City's solicitors being satisfied after such application that in the normal course of Land Title Office routine, the City will be registered owner of the Land, subject only to the Permitted Encumbrances and any other charge accepted by the City or to be discharged by solicitors' undertakings, the City will deliver a cheque, or cause its solicitors to deliver a solicitor's trust cheque, to the Owner or the Owner's solicitors, in either case in the amount of the Purchase Price, payable to the Owner or to the Owner's solicitors, in trust.

Risk

30. The Land is at the Owner's risk until application is made to register the Transfer in the Land Title Office, and is thereafter at the City's risk.

Fees and Taxes

31. The City must pay, as and when due and payable:
- (a) any property transfer tax payable under the *Property Transfer Tax Act* (British Columbia) in respect of the transfer of the Land to the City under this Option Agreement;
 - (b) Land Title Office registration fees in connection with the registration of the Transfer;

and

- (c) its own legal fees and disbursements;

and the Owner must pay its own legal fees and disbursements.

Currency and Payment Obligations

32. All dollar amounts referred to in this Agreement are Canadian dollars.

Preparation of Documents and Clearing Title

33. The City, at its sole expense, must prepare all necessary conveyancing documentation. The Owner, at its sole expense, must clear title to the Land, subject only to the Permitted Encumbrances.

Further Assurances

34. Each of the parties must at all times execute and deliver at the request of the other all such further documents, deeds and instruments, and do and perform such other acts as may be reasonably necessary to give full effect to the intent and meaning of this Option Agreement.

Notice

35. Any notice which may be given pursuant to this Option Agreement must be in writing and delivered by hand and addressed to the applicable party at its address set out above, or to such other address as the party may specify by notice in writing to the other in accordance with this section, or, if the Land is subdivided by the registration of a subdivision plan at the Land Title Office to create strata lots and such strata lots are subsequently conveyed to purchasers, the addresses for such purchasers from time to time shown on title to the Land or strata lots created by subdivision thereof in the Land Title Office.

A notice will be deemed to be given on the day of delivery.

All notices to the City must be addressed to the attention of the City's Corporate Officer.

Time of Essence

36. Time is of essence of this Option Agreement and the conveyance and transfer for which it provides.

Tender

37. Any tender of documents or money may be made upon the parties at their respective addresses set out in this Option Agreement or upon their respective solicitors.

No Other Agreements

38. This Option Agreement is the entire agreement between the parties regarding its particular subject matter.

No Representations

39. The City has made no representations, warranties, guarantees, promises, covenants or agreements to or with Manhao in respect of the particular subject-matter of this Agreement other than those expressed in writing in this Agreement, in the Offer to Purchase and in the Development Covenant.

Benefit

40. This Option Agreement enures to the benefit of and is binding upon the parties and their respective heirs, executors, administrators, successors and assigns.

Modification

41. This Option Agreement may not be modified except by an instrument in writing signed by the parties or by their successors or assigns.

Joint and Several

42. If at any time more than one person (as defined in the *Interpretation Act* (British Columbia)) owns the Land, each of those persons will be jointly and severally liable for all of the obligations of the Owner under this Option Agreement.

Interpretation

43. Wherever the singular is used or neuter is used in this Agreement, it includes the plural, the feminine, the masculine or body corporate where the context or the parties so required.

Governing Law

44. This Option Agreement will be governed by and construed in accordance with the laws of British Columbia.

Waiver

45. Waiver of any default by a party shall not be interpreted or deemed to be a waiver of any subsequent default. All waivers must be in writing.

As evidence of their agreement to be bound by the terms of this Option Agreement, the parties have executed the *Land Title Act* Form C attached to and forming part of this Option Agreement.

Schedules

Schedule "A" – City's GST Certificate

Schedule "B" – Owner's Statutory Declaration

Schedule "A"

CITY'S GST CERTIFICATE

To: SSS MANHAO INTERNATIONAL TOURISM GROUP (CANADA) CO. LTD ("Vendor")

Re: An agreement between the Vendor and CITY OF NANAIMO ("Purchaser") being an Option to Purchase (Hotel Site) dated for reference October 21, 2013 ("Agreement") in respect of the sale and purchase of the parcel in the City of Nanaimo legally described as Parcel Identifier: 029-126-002, Lot A Section 1 Nanaimo District and of the Bed of the Public Harbour of Nanaimo Plan EPP30518 ("Property")

The Purchaser hereby agrees with the Vendor that:

1. The Purchaser must indemnify and save harmless the Vendor from any GST, penalty, interest or other amounts which may be payable by or assessed against the Vendor under the *Excise Tax Act* ("ETA") as a result of, or in connection with, the Vendor's failure to collect and remit any GST applicable on the sale, and conveyance of the Property to the Purchaser.
2. The Purchaser is registered under Subdivision d of Division V of Part IX of the ETA for the collection and remittance of goods and services tax ("GST") and its registration number is 106930332 RT001.
3. The Purchaser will remit directly to the Receiver General of Canada the GST payable, and file the prescribed Form GST 60 pursuant to subsection 228(4) of the ETA in connection with the sale and conveyance of the Property.
4. The Property transferred pursuant to the Agreement:
 - (a) is being purchased by the Purchaser as principal for its own account and is not being purchased by the Purchaser as an agent, trustee, or otherwise on behalf of or for another person; and
 - (b) does not constitute a supply of a residential complex made to an individual for the purposes of paragraph 221(2) of the ETA.

Dated this _____ day of _____, 20____.

CITY OF NANAIMO by its authorized signatory:

Authorized Signatory

Schedule "B"

OWNER'S STATUTORY DECLARATION AS TO RESIDENCY

CANADA)	IN THE MATTER OF THE <i>INCOME TAX ACT</i> , S.C.
)	1970-71-72, AS AMENDED AND IN THE MATTER
PROVINCE OF)	OF SECTION 116 OF INCOME TAX ACT, AND IN
)	THE MATTER OF THE SALE OF PROPERTY
BRITISH COLUMBIA)	LOCATED AT AND LEGALLY DESCRIBED AS:
)	PARCEL IDENTIFIER: 029-126-002, LOT A
)	SECTION 1 NANAIMO DISTRICT AND OF THE
)	BED OF THE PUBLIC HARBOUR OF NANAIMO
)	PLAN EPP30518 (THE "PROPERTY")

I, _____, of _____
in the Province of British Columbia, SOLEMNLY DECLARE THAT:

1. I am a _____ of SSS MANHAO INTERNATIONAL TOURISM GROUP (CANADA) CO. LTD. (the "Company") and as such have personal knowledge of the matters declared to below.
2. The Company is the vendor with respect to the sale of the Property to CITY OF NANAIMO (the "Purchaser") for a gross selling price of \$565,000.00.
3. The Company was incorporated in Canada and has, continuously since its incorporation, had and now has its head office and chief place of business in Canada. The Company has, since its incorporation, continuously carried on and is now carrying on business in Canada. The ownership and control of the Company has, continuously since incorporation, remained and still remains in Canada.
4. The Company has no present intention of removing its head office or chief place of business from Canada, or of ceasing to continue to carry on business in Canada.
5. I verily believe that the Company is not a non-resident of Canada within the meaning of the *Income Tax Act* of Canada.
6. I make this statutory declaration for the express purpose of informing the Purchaser, pursuant to section 116 of the *Income Tax Act* of Canada, as to whether the Company is a resident or non-resident of Canada.

AND I MAKE this solemn declaration, conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath by virtue of the *Canada Evidence Act*.

SWORN BEFORE ME at the City of)
_____, in the Province of)
British Columbia, this ____ day of)
_____, 2013.)

A Commissioner for Taking Affidavits
in the Province of British Columbia)

Print Name:

END OF DOCUMENT

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)

KAHN ZACK EHRLICH LITHWICK LLP
270 - 10711 Cambie Road
Richmond BC V6X 3G5

Telephone: (604) 270-9571
LTO Client No. 011757
File No. 46320

Deduct LTSA Fees? Yes ☒

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

029-126-002 LOT A SECTION 1 NANAIMO DISTRICT AND OF THE BED OF THE PUBLIC HARBOUR OF NANAIMO PLAN EPP30518

STC? YES ☐

3. NATURE OF INTEREST CHARGE NO. ADDITIONAL INFORMATION
Covenant Section 219 - development

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):
SSS MANHAO INTERNATIONAL TOURISM GROUP (CANADA) CO. LTD. (INC. NO. BC0953560)

6. TRANSFEREE(S): (including postal address(es) and postal code(s))
CITY OF NANAIMO
A MUNICIPAL CORPORATION INCORPORATED UNDER THE LOCAL GOVERNMENT ACT
455 WALLACE STREET Incorporation No
NANAIMO BRITISH COLUMBIA N/A
V9R 5J6 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)



MICHAEL L. LIPTON
Barrister & Solicitor
270-10711 CAMBIE ROAD
RICHMOND, BRITISH COLUMBIA
V6X 3G5 604-270-9571

(as to all signatures)

Execution Date

Y	M	D
13	10	21

Transferor(s) Signature(s)

SSS MANHAO INTERNATIONAL TOURISM GROUP (CANADA) CO. LTD. by its authorized signatory (ies):



Name:

Name:

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.

Execution Date

Transferor / Borrower / Party Signature(s)

CITY OF NANAIMO by its authorized
signatory(ies):

Mayor:

Corporate Officer:

(as to all signatures)

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.

TERMS OF INSTRUMENT – PART 2

SECTION 219 HOTEL DEVELOPMENT COVENANT

THIS COVENANT dated for reference the 21st day of October, 2013

BETWEEN:

SSS MANHAO INTERNATIONAL TOURISM GROUP (CANADA) CO. LTD., a company duly incorporated under the laws of the Province of British Columbia having its registered and records office care of Suite 270, 10711 Cambie Road, Richmond, British Columbia V6X 3G5

(the "Owner")

OF THE FIRST PART

AND:

CITY OF NANAIMO, a municipality incorporated under the laws of the Province of British Columbia and having an address at 455 Wallace Street, Nanaimo, British Columbia, Canada V9R 5J6

(the "City")

OF THE SECOND PART

WHEREAS:

- A. Pursuant to an Offer to Purchase between Manhao and the City dated for reference June 19, 2013 (the "Offer to Purchase"), Manhao agreed to purchase from the City for the purpose of developing and operating a hotel (the "Hotel") certain land situated at 100 Gordon Street, Nanaimo, British Columbia, and legally described as:

Parcel Identifier: 029-126-002Lot A Section 1 Nanaimo District and of the Bed of the Public Harbour of Nanaimo Plan EPP30518

(the "Land");

- B. It is important to the City that the Land be used only for a hotel and ancillary purposes, despite other uses that may be permitted from time to time by City of Nanaimo Zoning Bylaw 4500, as amended or replaced from time to time;
- C. Pursuant to the Offer to Purchase, the City's sale of the Land and Manhao's purchase of the Land is subject to the condition that the Land will be used only as a hotel;

- D. Section 219 of the *Land Title Act* authorizes an owner to grant to a municipality a covenant containing provisions regarding the use of land, or the use of a building on or to be erected on the land, or that land is to be built on in accordance with the covenant, or is not to be built on except in accordance with the covenant, or is not to be built on, or that land is not to be subdivided except in accordance with the covenant, or is not to be subdivided;
- E. By this Covenant, the Owner agrees with the City that the Land shall be used only for a Hotel (as hereinafter defined) on the terms and conditions hereinafter appearing.

NOW THEREFORE THIS AGREEMENT WITNESSES that pursuant to Section 219 of the *Land Title Act* and in consideration of the premises of this Agreement, the sum of Ten Dollars (\$10.00), now paid by the City to the Owner, and other good and valuable consideration (the receipt and sufficiency whereof is hereby acknowledged), the Owner covenants and agrees with the City as follows:

Definitions

1. In this Covenant:

- (a) "Central Reservation System" means a professional management system or arrangement to provide for the orderly and assured management of reservations and use of Guest Rooms by the Public and by the Guest Room Owner or person(s) designated by the Guest Room Owner pursuant to section 18 of this Agreement, which system or arrangement is in accordance with reasonable industry standards and similar to the systems or arrangements used by hotels of a similar quality, reputation and location as the Hotel;
- (b) "Conference Centre" means the Vancouver Island Conference Centre located on property legally described as Parcel Identifier: 026-458-942, Lot A, Section 1, Nanaimo District and of the Bed of the Public Harbour of Nanaimo Plan VIP79754 Except That Part In Plan VIP85148;
- (c) "Guest Room" means a room or suite for Public Lodging Use within the Hotel, whether strata titled or not;
- (d) "Guest Room Owner" means the registered owner of a Guest Room from time to time;
- (e) "Hotel" is defined in section 3;
- (f) "Multi-Day Conferences" mean events at the Conference Centre where the delegates are primarily from outside Nanaimo, British Columbia; where the events span two or more consecutive days; where the delegates require accommodation at one or more hotels; where the events require catered functions; and may or may not have exhibit space;

- (g) "Public" means all persons other than a Guest Room Owner or his designatee pursuant to section 18 of this Agreement;
- (h) "Public Lodging Use" means the use of a Guest Room in the Hotel by the Public for temporary accommodation by tourists, visitors and travellers.

Interpretation

2. In this Covenant:

- (a) references to the Land include the Hotel and the Guest Rooms within the Hotel;
- (b) if the Land on which the Hotel is situate does not consist of strata lots created by the filing of a strata plan at the Land Title Office, references to the "Guest Room Owner" means the Owner of the Land and Hotel from time to time as the Land and Hotel may be sold or transferred to other owners;
- (c) if the Land on which the Hotel is situate consists of strata lots created by the filing of a strata plan at the Land Title Office such that each Guest Room is a separate strata lot, the term "Owner" or "Guest Room Owner" refers to the Owner of the strata lot which consists of the Guest Room from time to time as it may be sold or transferred to other owners.

Use Restriction - Land

- 3. The Land must be used for a full-service hotel, having a minimum of 200 Guest Rooms and providing ancillary retail, commercial, restaurant, lounge, office, and recreation facilities customarily accessory to and part of a full-service hotel (the "Hotel"), and for no other use whatsoever. For certainty, the Land shall be deemed to be used as a Hotel even if it is closed for renovations or repairs; closed for sale to a new buyer; or closed for other legitimate purposes.

Covenant to Build and Operate Hotel

- 4. The Owner must construct and operate the Hotel in strict compliance with this Covenant.

Design of Hotel

- 5. The Owner must construct the Hotel in general accordance with Development Permit 854, approved by City Council on October 7, 2013.

Walkway to Conference Centre

- 6. The Owner must, as part of the initial construction of the Hotel, build an overhead walkway above Gordon Street between the Hotel and the Conference Centre (the

"Walkway"), in order to provide Hotel Guests, users of the Conference Centre, and the public generally, free access between the Hotel and Conference Centre.

Walkway Easement

7. The Owner acknowledges that it is permitted to construct the Walkway pursuant to an easement registered against title to a portion of Gordon Street and a portion of the Conference Centre and shown on the title to the Land as an appurtenance to the Land, and the Owner further acknowledges that it has ongoing obligations under that easement that it is required to perform.

Connection to Piper Park

8. The Owner must, as part of the initial construction of the Hotel, build a bridge connection structure (the "Connection") between the Hotel and the City-owned property to the east of the Land at 100 Cameron Street, known as Piper Park, and legally described as Parcel Identifier: 005-496-497 Lot B, Section 1, Nanaimo District, Plan 8979 ("Piper Park"), in order to provide Hotel Guests, users of the Piper Park, and the public generally, free access between the Hotel and Piper Park.

Connection Easement

9. The Owner acknowledges that it is permitted to construct the Connection pursuant to an easement registered against title to Piper Park and shown on the title to the Land as an appurtenance to the Land, and the Owner further acknowledges that it has ongoing obligations under that easement that it is required to perform.

Construction – Completion Deadline

10. The Owner must complete construction of the Hotel, including the Walkway and the Connection, as evidenced by the Owner obtaining an occupancy permit for the Hotel pursuant to the City's Building Bylaws, and as evidenced by the Owner opening the Hotel for business, within thirty-six (36) months of the date that the Owner is issued a foundation permit for the Hotel.

Restriction on Hotel Opening

11. The Owner must not open the Hotel for business unless construction of the Walkway and the Connection are completed, as evidenced by an occupancy permit or other form of final approval under the City's Building Bylaws, and unless the Walkway and Connection are open for public use, unless the parties, acting reasonably, agree otherwise.

Hotel Standard

12. Without limiting section 3, the Owner shall operate the Hotel as at least a four-diamond

hotel under the CAA/AAA (Canadian Automobile Association/American Automobile Association) diamond rating system.

Servicing

13. The Owner is responsible for all costs of on-site and off-site servicing for the Hotel and the Land, including any service extensions and expansions necessary to service the Hotel and the Land.

Utilities

14. The Owner is responsible for determining the location of any and all utility lines and works on the Land, and for making arrangements at its own cost for the removal and moving of them in order to accommodate the construction required by this Covenant, except for removal of the abandoned and decommissioned sewer line located across the southwest corner of the Land, which sewer line the City shall remove at its sole cost and expense.

Covenant to Operate Hotel

15. After construction of the Hotel, the Owner must continuously operate the Hotel or cause the Hotel to be operated, and the Hotel must not cease to be open for business, except in the case of substantial damage by natural hazard, by fire, or by other insurable hazard, or in the case the Hotel is closed for renovations or repairs, or is closed for sale to a new buyer, or closed for other legitimate purposes.

Use Restriction – Hotel Guest Rooms

16. Subject only to section 18, each Guest Room within the Hotel must be used and occupied for Public Lodging Use only and each Guest Room Owner must make his Guest Room continuously available for Public Lodging Use through a Central Reservation System.

Stratification of Hotel Guest Rooms

17. It is not a breach of this Covenant for the Owner to subdivide the Land by registration of a strata plan at the Land Title Office to create strata lots for each of the Guest Rooms within the Hotel, thus allowing Guest Rooms to be sold either as a group or individually.

Occupancy by Guest Room Owner

18. Notwithstanding section 16, if the Land on which the Hotel is situate is subdivided by registration of a strata plan at the Land Title Office to create strata lots as permitted under section 17, a Guest Room Owner or his designatee shall have the right to occupy a Guest Room for a period not exceeding two (2) weeks each calendar year, without payment, except that the occupancy of a Guest Room Owner or his designatee of a

Guest Room must be booked through the Central Reservation System.

Reservation System

19. Except for occupancy by the Guest Room Owner himself under section 18, each Guest Room Owner must continuously list his Guest Room with the operator of the Hotel or other booking agency through a Central Reservation System, and each Guest Room Owner must make his Guest Room continuously available for Public Lodging Use through the Hotel's Central Reservation System or front desk at all times except where the Hotel is closed for renovations or repairs; closed for sale to a new buyer; or closed for legitimate purposes.

Block Hotel Room Guarantee to the Conference Centre

20. The Owner must guarantee a block of Guest Rooms at the Hotel for Multi-Day Conferences at the Conference Centre, in accordance with the chart below.

Size of Multi Day Conference	Greater than 12 months notice	Less than 12 months notice	Less than 6 months notice	Between 3 and 6 months notice
200 or more delegates	150 rooms	130 rooms	100 rooms	50 rooms
Less than 200 delegates	100 rooms	80 rooms	50 rooms	30 rooms
Less than 100 delegates	25 rooms	25 rooms	25 rooms	25 rooms

In the chart above, the headings regarding notice refer to the amount of notice that is given by the Conference Centre to the Owner (or to the operator of the Hotel, on behalf of the Owner) of the holding of a Multi-Day Conference at the Conference Centre.

When the Owner of the Hotel guarantees the block booking of Guest Rooms under this section for a particular Multi-Day Conference, the Owner may require that hotel attrition clauses be imposed including, without limitation, provision for posting and forfeiture of deposits to secure such booking and shall negotiate the terms of such clauses with the organizer of such Multi-Day Conference(s).

21. The Owner shall, in good faith, work cooperatively with the organizer of any Multi-Day Conference or operator of the Conference Centre to arrange for discounted rates for Guest Rooms in accordance with reasonable industry standards with respect to hotels of a similar quality, reputation and location as the Hotel to promote bookings for Multi-Day Conferences at the Conference Centre.

Discretionary Relief

22. Notwithstanding anything in this Covenant contained, the City, upon request in writing, acting reasonably, may consent to release any Guest Room or portion of the Land from any or all of the restrictions or rent charges set out herein, either fully, on conditions, or for stipulated periods of time.

Annual Accrual - Breach of Covenant to Make Guest Rooms Available for Public Lodging Use

23. If a Guest Room Owner does not continuously make available his Guest Room for Public Lodging Use as required by section 16 of this Covenant or if a Guest Room Owner breaches section 18 or section 19 of this Covenant, the Guest Room Owner must pay to the City on demand:

\$200.00, which the parties agree is a reasonable estimation of the 2013 room rate per Guest Room, increased each calendar year by the CPI Index

multiplied by:

78%, which the parties agree is a reasonable estimation of the occupancy rate of the Guest Rooms

multiplied by 365 (days per year)

and subtracted from the total above:

the sum of all tax paid for the respective period in respect of the Guest Room pursuant to the *Hotel Room Tax Act*, as evidenced by receipts issued by the Province of British Columbia,

which amount shall be secured by the annual rent charge granted in section 24 hereof, and for the purposes of this calculation the term "CPI Index" means the percentage increase in the Consumer Price Index for Vancouver for all items as published by Statistics Canada for the twelve month period immediately preceding the first day of breach by the Guest Room Owner.

Grant of Rent Charge

24. The Owner grants to the City in perpetuity an annual rent charge (the "Rent Charge") in the amount of the annual accrual determined pursuant to section 23 for each Guest Room on the Land or strata lots if the Land has been subdivided, as the case may be, which Rent Charge shall be for the sole and absolute benefit of the City. The Rent Charge shall accrue daily, except as provided for in section 25 of this Covenant and shall

issue and be payable from the Land or strata lots situate on the Land, as the case may be, without any set-off or deduction on or before July 1 in each and every year. Notwithstanding anything contained in this Covenant, the City covenants and agrees that if any mortgagee commences foreclosure proceedings against the Land or Guest Room or strata lots for the Guest Rooms into which the Land has been subdivided by registration of a strata plan, realizes on its security against the Land or any Guest Room or Guest Rooms into which the Land has been subdivided, neither the mortgagee nor any purchaser purchasing the Land or Guest Room or Guest Rooms pursuant to an order for sale of the court will be bound to pay any portion of the Rent Charge then payable with respect to the Land or Guest Room or any such Rent Charge which has accrued prior to the date that the mortgagee or any purchaser purchasing the Land or Guest Room pursuant to an order for sale of the court takes possession of the Lands, or of any such Guest Room and the City hereby waives its entitlement to the Rent Charge for such period.

Relief from Rent Charge

25. Despite sections 23 and 24 which provide for an annual accrual and annual Rent Charge, the Rent Charge provided for in section 24 shall not accrue unless and only for periods that an Owner or Guest Room Owner, as the case may be, is in breach of its obligation under sections 16, 18 or 19, and in the event of such breach, the Rent Charge shall accrue daily and be payable at the end of each calendar month.

Joint and Several

26. Where the Owner is more than one person, they shall be bound jointly and severally by this Covenant and by the Rent Charge.

Collection of Unpaid Rent Charge

27. If and whenever the Owner is in default in payment of the Rent Charge and such default continues for thirty (30) days following the date in which the Rent Charge is payable, then the City may, without notice or any form of legal process:
 - (a) forthwith enter onto the Land or Guest Room, as the case may be, and exclusively possess and enjoy the same including all rents, revenues and profits therefrom until the City has recovered the Rent Charge, and all costs and expenses incurred by the City's exercise of this right of re-entry and recovery;
 - (b) upon entry, rent out and let the Land or Guest Room, as the case may be, and allow third parties into possession on such terms and conditions as may be determined by the City in its sole and absolute discretion; or
 - (c) enter upon the Land or Guest Room, as the case may be, to levy distress and to seize, remove, and sell any goods, chattels and equipment found thereon,

despite any rule of law or equity to the contrary, and the Owner or Guest Room Owner, as the case may be, to the extent the law permits, hereby waives and renounces the benefit of any present or future statute or law limiting or eliminating the City's right of distress.

Remedies

28. No reference to or exercise of any specific right or remedy by the City in enforcing the Rent Charge or the restrictions, terms and conditions of this Covenant shall preclude, prejudice or limit the City from exercising any other remedy at law or in equity not expressly provided for herein. Without limiting the generality of the foregoing, the City may sue on the covenant of the Owner, and in debt for recovery of the Rent Charge, and may enjoin any breaches of the restrictions herein. No remedy shall be exclusive or dependent upon any other remedy and the City may from time to time exercise any one or more of the remedies available to it independently or in combination.

No City Liability

29. The City, in exercising rights pursuant to sections 27 and 28 of this Covenant, shall not be liable or responsible to the Owner or Guest Room Owner in any way for any loss or damage to the Land or Guest Room, as the case may be, or injury to person, or loss or damage to any property of the Owner or Guest Room Owner or of any other person while such property is on the Land or Guest Room, however incurred or suffered during any time that the City is in exclusive possession of or has allowed or permitted any other person to go into possession of the Land or Guest Room or in respect of any levy of distress upon goods, chattels and equipment on the Land or Guest Room unless caused by the negligence or deliberate wrongful acts of the City or those for whom the City is responsible at law.

No Exemption From Jurisdiction

30. Nothing in this Covenant shall exempt the Owner or the Land from any statutory requirements or imposition or from the ordinary jurisdiction of the Council of the City, its bylaws, permits, regulations and orders.

Approvals

31. Wherever in this Covenant the approval or consent of the City is required, or some act or thing is to be done to the satisfaction of the City:
- (a) such consent or approval may be given by resolution of the Council of the City or by an officer of the City designated in writing by a resolution of Council of the City for such purpose;
 - (b) such provisions shall not be deemed to have been fulfilled or waived unless the approval, consent or expression of satisfaction is in writing and no prior

approval, consent or expression of satisfaction and no condoning, excusing or overlooking by the City on previous occasions when such approval, consent or satisfaction was required shall be taken to operate as a waiver of the necessity for such approval or satisfaction wherever required by this Covenant;

- (c) such approval or consent may be given on terms and conditions, and security may be required to be posted in an amount and form satisfactory to the City to ensure compliance with the terms and conditions of any approval or consent given; and
- (d) the discretion of the City shall be contractual only, and shall not be subject to public law duties, and the principles of procedural fairness and the rules of the natural justice shall have no application.

No Derogation

32. Nothing contained or implied herein shall impair, limit or affect the City's rights and powers in the exercise of its functions pursuant to the *Community Charter*, the *Local Government Act*, or any other enactment, and all such powers and rights may be fully exercised in relation to the Land as if this Covenant had not been granted by the Owner.

Priority

33. The Owner shall after execution hereof by it do or cause to be done all acts necessary to grant priority to this Covenant over all charges and encumbrances which may have been registered or have pending registration against title to the Land in the Land Title Office save and except those as have been approved by the City or which have been granted to the City.

Further Acts

34. The Owner shall do and cause to be done all things and shall execute and cause to be executed all documents and other instruments which may be necessary to give proper effect to the intention of this Covenant.

Indemnity

35. The Owner covenants to and does hereby indemnify and save harmless the City, its elected officials, officers, employees, contractors and agents (the "City Representatives") at all times from all losses, damages, actions, suits, claims, demands, costs, expenses, fines and liabilities of any nature whatsoever by whomsoever brought, made or suffered for which the City or any of the City Representatives shall or may become liable, incur or suffer by reason of any injury to person (including death) or loss or damage to property or consequential or economic loss:

- (a) arising directly or indirectly from a breach or non-performance of this Covenant

by the Owner, whether directly or through its directors, officers, employees, agents, contractors, licensees, invitees or others of the Owner, including defaults in paying the Rent Charge;

- (b) arising directly or indirectly from the exercise or purported exercise by the Owner of any rights to build on and use the Land pursuant to this Covenant or in the fulfilling of its obligations pursuant to this Covenant; and
- (c) arising directly or indirectly from any intentional act, or from any omission, default or negligence of the Owner, its directors, officers, employees, agents, contractors, or invitees in the building on or use of the Land

unless caused by the negligence or deliberate wrongful acts of the City or those for whom the City is responsible at law.

Performance at Cost of Owner

36. The Owner shall comply with all obligations pursuant to this Covenant at its sole cost and expense.

Entire Agreement

37. This Covenant is the entire agreement between the City and the Owner in respect of its specific subject-matter.

No Representations

38. The City has made no representations, warranties, guarantees, promises, covenants or agreements to or with the Owner in respect of the particular subject-matter of this Covenant other than those expressed in writing in this Covenant.

Amendment

39. No amendment to this Covenant is valid unless in writing and executed by the parties.

Interpretation

40. In this Covenant:

- (a) wherever the singular or masculine is used the same shall be construed as meaning the plural or the feminine or the body corporate or politic where the context or the parties hereto so require;
- (b) every reference to a party is deemed to include heirs, executors, administrators, successors, assigns, officers and employees of such parties wherever the context so requires or allows; and

- (c) the headings are inserted for reference and convenience only and must not be used to construe or interpret the provisions hereof.

Covenants

41. All provisions of this Covenant are to be construed as covenants.

Severance

42. Should any article, section, or lesser portion of this Covenant be held invalid or unenforceable by a court of competent jurisdiction, the said portion shall be severed and the invalidity or unenforceability of such article, section or portion shall not affect the validity of the remainder which shall remain binding on the Owner and shall charge the Land and be enforceable to the fullest extent of the law.

Time

43. Time is of the essence of this Covenant.

Interest in Land

44. This Covenant shall charge the Land pursuant to Section 219 of the *Land Title Act* and the burden of all the covenants herein shall run with the Land and charge the Land and every part into which the Land may be divided or subdivided, including the Guest Rooms.

Enurement

45. This Covenant shall enure to the benefit of and be binding upon the parties hereto and their corporate successors and successors in title.

Notice

46. Any notice which may be given pursuant to this Agreement must be in writing and either delivered by hand and addressed to the applicable party at its address set out above, or to such other address as the party may specify by notice in writing to the other in accordance with this section.

A notice will be deemed to be given on the day of delivery.

All notices to the City must be addressed to the attention of the City's Corporate Officer.

Waiver

47. Waiver of any default by a party shall not be interpreted or deemed to be a waiver of any subsequent default. All waivers must be in writing.

Compliance with Laws

48. The Owner shall carry on and conduct its activities on the Land and pursuant to this Agreement in compliance with any and all applicable statutes, enactments, bylaws, regulations and orders from time to time in force and obtain and maintain all required approvals, permits and licenses thereunder and not to do or omit to do anything in contravention thereof.

Execution

49. As evidence of their agreement to be bound by the above terms the parties each have executed and delivered this Covenant by executing the *Land Title Act* Form C to which this Covenant is attached and which forms part of this Covenant.