

# BAKER & BAKER

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March 14, 2013

Don Lidstone

Dear Mr. Lidstone,

**Re: Concordia Seawatch Ltd. ("Concordia")**

## *General*

1. The purpose of this agreement is to agree on a procedure and on steps which can be taken to:
  - a. effect the remediation of the sinkhole on Seawatch Lane (the "Sinkhole") and take such measures as Golder recommends to repair the spring on lot 3 that has occurred;
  - b. enable Concordia to proceed with its development of the Subdivision (including the regular course of inspections and permits);
    - i. inspections are to be carried out on Lots 8 and 13 as soon as practicable following execution of this letter;
    - ii. other inspections are to be carried out in the ordinary course. The District will endeavor to respond promptly to inspection requests;
  - c. discontinue the Petition; and
  - d. repeal the District's remedial action requirement resolution.
2. Concordia will retain Golder Associates ("Golder") as its Engineer of Record for the completion of Phase I. As recommended by Golder, Concordia will at its expense, remediate the Sinkhole and will take such measures as Golder recommends to repair the spring on lot 3 and any underground cavities which may be associated with the Sinkhole or the spring.

3. Each lot owned by Concordia will be remediated according to the particulars hereinafter set out and will have lot specific geotechnical assessments and lot specific covenants registered against title, all of which will be dealt with at the home construction phase
4. The existing covenant shall remain on the lands. Concordia agrees that new covenants will be attached to each parcel presently owned by Concordia. The new covenants will include the various applicable Golder reports so that purchasers will take with notice of the current status of the lands. The new covenants' sole purpose is to put purchasers on notice of the geotechnical issues relating to the land, and to have the purchasers accept the risks associated therewith. A template for the new covenant is attached hereto. The new covenants will be executed and registered from time to time as the required reports become available. The form of the new covenants will follow the attached template, subject to such variations as may be required in respect of individual lots.
5. Both the District and Concordia have been put to substantial expense. The reasons for the expense are disputed by the parties. In order to achieve immediate resolution, Concordia will pay the sum of \$75,000 (seventy-five thousand dollars) to the District, concurrently with the October 17, 2012 resolution, referred to herein, being rescinded.

*Particulars*

- a. Lot 3: Concordia will carry out the remediation of the Sinkhole in Seawatch Lane and the spring on lot 3 pursuant to Golder's specifications. Temporary remediation measures will be taken as necessary. Complete remediation will take place during the dry season in summer 2013.
- b. Lot 3 will not be built upon until the spring on the said lot and the Sinkhole have been remediated per the recommendations of Golder Engineering.
- c. Lot 21: The retaining wall and the permanent slope at the South end of lot 21 is to be completed according to the standards recommended by Golder. This will take place in the summer of 2013.
- d. Lots 1, 2 and 4: In order to ensure access to carry out the remedial work on lot 3, Concordia will not commence constructions on these lots until the remedial works on Lot 3 have been completed.
- e. Lots 5, 6, 9 - 12 will have a lot specific geotechnical assessment and assurances provided by Golder as part of the building permit application. The recommendations will be implemented with at the time of construction with specific attention to drainage blankets and their function.

- f. Lot 8 - As this home is 100% complete Golder will review elevations and potential piping concerns as they relate to hydraulic gradients and existing drainage blankets. All recommended remediation to be performed per Golder's requirements.
- g. Lot 13: Golder to review and certify all retaining walls and the need for and functionality of drainage blankets with respect to the hydraulic gradient. Golder to review the need for and functionality of drainage at retaining walls and at house perimeter footing drains.
- h. Lots 14 - 15: Golder to review the need for and functionality of (i) drainage blankets and filter cloths with respect to the hydraulic gradient, and (ii) drainage at the site perimeter, retaining walls and footing drains, which recommendations will be implemented by Concordia.
- i. Lots 16 to 18, 22: Golder to provide lot specific geotechnical assessments and assurances as part of the building permit application. The recommendations will be implemented at the time of construction.
- j. Lot 28: Work will not commence until after remediation of the spring, sinkhole and road works to the satisfaction of Golder. Subsequently, Golder will provide a lot specific geotechnical study and assurances as a condition of the building permit.
- k. Concordia will discontinue its Petition without costs to either party and the District will repeal its resolution relating to the declaration of nuisance and hazardous condition.
- 6. All of the certifications, assurances and recommendations provided by Golder pursuant to the retainer between Concordia and Golder will be to the same standards of engineering practice as are required under the British Columbia Building Code, Local Government Act, and Community Charter, and any additional enactments that apply to building, subdivision or professional engineers in the Province of British Columbia
- 7. Exclusive of privileged solicitor- client communications, Concordia will provide copies of all reports, letters, memoranda, inspection reports, assurances and certifications prepared by Golder to the District of Sechelt

*General reservation of rights*

8. The parties acknowledge that additional geotechnical events may occur at the Subdivision, and that, as a result, it is not possible to enter into a comprehensive settlement that will deal with such future events. All parties reserve their rights to take any and all steps, and to seek any and all available remedies, in respect of work which may be required, or in respect of events or conditions which may develop, occur, or become known at the Subdivision in the future. Without limitation, this includes the right of either party to enforce the subdivision servicing agreement and the existing registered s. 219 covenant pursuant to the terms thereof, and to raise any available defences.
9. Any future purchasers at the Subdivision will be required to sign an acknowledgment of risk in relation to the geotechnical condition of the Subdivision. Those geotechnical conditions will also be included in the new s.219 covenant, to be registered against title to the remaining lots.
10. The District cannot bind itself contractually either to enact or to repeal a bylaw or resolution. Accordingly, this agreement is subject to, and will take effect upon, (i) Council for the District resolving to rescind Resolution No. IC45 10/2012, adopted by Council on October 17, 2012, on or before March 13th, 2013, and (ii) the parties agreeing to a mutually acceptable form of covenant.
11. This proposal will result in the remediation of the Sinkhole at Concordia's cost under the guidance of a most experienced geotechnical expert whose firm was on a list recommended by your own advisors. It will also avoid the risks inherent in extremely complex and expensive litigation. The alternative is a law suit which will wind its way through the courts for years and in Concordia's opinion will diminish the values of the properties of the existing homeowners and the District's own tax base. It will also allow the project to be advanced without further delay.

Sincerely,

BAKER & BAKER



JONATHAN BAKER