

CAPITAL REGIONAL DISTRICT
BYLAW NO. 4500

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A BYLAW TO AUTHORIZE A HOUSING AGREEMENT
(604 NELSON STREET)

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WHEREAS:

- A. The owner of lands legally described as PID: 004-930-941 Lot B, Suburban Lot 37, Esquimalt District, Plan 11993; PID: 005-398-860 Lot 1, Suburban Lot 45, Esquimalt District, Plan 9871; and PID: 005-398-991 Lot 2, Suburban Lots 37 and 45, Esquimalt District, Plan 9871 Except Part in Plan 16394, known as 604 Nelson Street, which is the consolidation of 602 Nelson Street, 608 Nelson Street, and 612 Nelson Street, wishes to develop such lands in the Township of Esquimalt to provide, among a strata development of market housing, ten (10) units of affordable housing consisting of one (1) studio, six (6) one-bedroom and three (3) two-bedroom units;
B. Under the Local Government Act, RSBC 2015, c 1, section 483, the Capital Regional District may enter into an agreement, by bylaw, to ensure the availability of the housing units to certain classes of persons identified in the agreement, the administration and management of the units, rents, leases, and sale prices that may be charged, and the rates at which these may be increased over time as specified in the agreement or as determined by a formula; and under the Land Title Act, RSBC 1996, c 250, section 219, it may place a covenant on property to restrict its use and alienation; and
C. The Capital Regional District Board wishes to enter into such a housing agreement and covenant to secure the affordable housing;

NOW THEREFORE, the Capital Regional District Board in open meeting assembled hereby enacts as follows:

- 1. The Capital Regional District is authorized to enter into the Local Government Act section 483 housing agreement and Land Title Act section 219 covenant attached to this Bylaw as Appendix 1 (the "Housing Agreement").
2. The Chair of the Capital Regional District is authorized to execute the Housing Agreement and the Corporate Officer or designate is authorized to sign and file in the Land Title Office a Notice of the Housing Agreement, as required by the Local Government Act.
3. This Bylaw may be cited for all purposes as "Resale Control and Housing Agreement Bylaw (604 Nelson Street), 2022".

READ A FIRST TIME THIS day of 20\_\_
READ A SECOND TIME THIS day of 20\_\_
READ A THIRD TIME THIS day of 20\_\_
ADOPTED THIS day of 20\_\_

CHAIR

CORPORATE OFFICER

## 1. Application

**Cox Taylor, Barristers & Solicitors**  
**Third Floor, Burnes House**  
**26 Bastion Square**  
**Victoria BC V8W 1H9**  
**250-388-4457**

N-499-1\*LRL

## 2. Description of Land

PID/Plan Number	Legal Description
<b>004-930-941</b>	<b>LOT B, SUBURBAN LOT 37, ESQUIMALT DISTRICT, PLAN 11993</b>
<b>005-398-860</b>	<b>LOT 1, SUBURBAN LOT 45, ESQUIMALT DISTRICT, PLAN 9871</b>
<b>005-398-991</b>	<b>LOT 2, SUBURBAN LOTS 37 AND 45, ESQUIMALT DISTRICT, PLAN 9871 EXCEPT PART IN PLAN 16394</b>

## 3. Nature of Interest

Type	Number	Additional Information
<b>COVENANT</b>		
<b>PRIORITY AGREEMENT</b>		<b>Granting the Covenant herein priority over Mortgage CA9335107 and Assignment of Rents CA9335108</b>
<b>PRIORITY AGREEMENT</b>		<b>Granting the Covenant herein priority over Mortgage CA9335174 and Assignment of Rents CA9335175</b>

## 4. Terms

Part 2 of this instrument consists of:

**(b) Express Charge Terms Annexed as Part 2**

## 5. Transferor(s)

**SUKHPAL SINGH SIDHU, (AS TO PRIORITY)**  
**NELSON ESQUIMALT DEVELOPMENTS LTD., NO.BC1308317**  
**NATIONAL BANK OF CANADA, (AS TO PRIORITY)**

## 6. Transferee(s)

**CAPITAL REGIONAL DISTRICT**  
**625 FISGARD STREET**  
**VICTORIA BC V8W 1R7**

## 7. Additional or Modified Terms



8. Execution(s)

This instrument creates, assigns, modifies, enlarges 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.

Witnessing Officer Signature	Execution Date	Transferor / Transferee / Party Signature(s)
 <hr/>	<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;">           YYYY-MM-DD            2022-06-28         </div>	<p><b>Nelson Esquimalt Developments Ltd.</b>          By their Authorized Signatory</p>  <hr/> Name: Tye LeDuc
<p><b>Ramanjit Mann</b>          Barrister and Solicitor          Notary Public in and for          the Province of Alberta</p>	<p>Suite 765          2710-17th Ave. S.E.          Calgary, AB T2A 0P6</p>	

**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.

Witnessing Officer Signature	Execution Date	Transferor / Transferee / Party Signature(s)
<hr/>	<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;">           YYYY-MM-DD         </div>	<p><b>National Bank of Canada</b>          By their Authorized Signatory</p> <hr/> Name:
		<hr/> 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.



Witnessing Officer Signature

Execution Date

Transferor / Transferee / Party Signature(s)

\_\_\_\_\_

YYYY-MM-DD

\_\_\_\_\_  
**Sukhpal Singh Sidhu**

**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.

Witnessing Officer Signature

Execution Date

Transferor / Transferee / Party Signature(s)

\_\_\_\_\_

YYYY-MM-DD

**Capital Regional District**  
By their Authorized Signatory

\_\_\_\_\_  
**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.

**Electronic Signature**

Your electronic signature is a representation that you are a designate authorized to certify this document under section 168.4 of the *Land Title Act*, RSBC 1996 c.250, that you certify this document under section 168.41(4) of the act, and that an execution copy, or a true copy of that execution copy, is in your possession.

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## TERMS OF INSTRUMENT – PART 2

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### SECTION 219 COVENANT AND HOUSING AGREEMENT

#### WHEREAS:

- A. NELSON ESQUIMALT DEVELOPMENTS LTD., INC. NO. BC1308317 (the “**Developer**”) is the registered owner of the Lands described in Item 2 of Part 1 of this General Instrument (the “**Lands**”) and the Developer intends to complete a one-hundred and nine (109) residential strata unit and one (1) commercial unit development on the Lands (the “**Strata Development**”) and shall designate one (1) studio, six (6) one-bedroom and three (3) two-bedroom units for a total of ten (10) of the strata lots to be created by the strata plan for the Strata Development as the Affordable Units to which strata lots this Agreement will apply.
- B. The Developer intends to build the Affordable Units to ensure the availability of affordable housing in Esquimalt, British Columbia.
- C. To ensure that the Affordable Units continue to be available as affordable housing, the Developer has agreed to grant the Capital Regional District (“**CRD**”):
  - (a) a covenant under Section 219 of the *Land Title Act* (the “**Covenant**”) and enter into a housing agreement under Section 483 of the *Local Government Act* setting out, amongst other things, the procedure to be followed in connection with any sale of an Affordable Unit as well as restrictions on the sale price on use and rental of the Affordable Units (the “**Housing Agreement**”);
  - (b) an option to purchase an Affordable Unit if it is sold, rented or used in breach of the Covenant.

NOW THEREFORE in consideration of the mutual covenants set out below and other good and valuable consideration (the receipt and sufficiency of which are acknowledged by each of the parties), the parties agree as follows:

### SECTION 1. INTERPRETATION

#### 1.1 **Definitions**. In this Agreement:

- 1.1.1 “Administration Fee” has the meaning given to it at section 2.2.9;
- 1.1.2 “Affordable Unit” or “Affordable Units” shall mean the one (1) studio, six (6) one-bedroom and three (3) two-bedroom units for a total of ten (10) strata lots to be designated by the Developer within the Strata Development as the strata lots to which this Agreement shall apply;
- 1.1.3 “Agreement” means this Covenant and Housing Agreement, including all recitals and schedules attached hereto;
- 1.1.4 “Appraiser” means an appraiser accredited by the Appraisal Institute of Canada and duly

qualified to appraise an Affordable Unit and on an approved list maintained by the NPO, if any;

- 1.1.5 "Approved Lender" means an "approved lender" (as defined in the *National Housing Act*, R.S.C. 1985, c. N-11) which holds an Insured Mortgage of an Affordable Unit;
- 1.1.6 "BC Housing Low and Moderate Income Limits" or "HIL" means the income required to pay an average market rent for a comparably sized unit in the private market, as determined by BC Housing or any successor. If HIL is not determined or published in any given year, the most recent year of publication shall be used, subject to such reasonable adjustments made by the NPO acting reasonably. For first sale of an Affordable Unit, the 2021 Housing Income Limits for the Victoria region, by size of unit are:
- Bachelor: \$47,500
  - 1 Bedroom: \$47,500
  - 2 Bedroom: \$61,000
  - 3 Bedroom: \$79,000
- 1.1.7 "Business Day" means any day other than Saturday, Sunday or a statutory holiday in the Province of British Columbia, or day that the LTO is not open for business;
- 1.1.8 "CMHC" means Canada Mortgage and Housing Corporation or any successor thereto;
- 1.1.9 "Covenant" has the meaning stated in Recital C and is the covenant set out in Section 2.1;
- 1.1.10 "CCPI" means the Core Consumer Price Index for Victoria published from time to time by the Bank of Canada, or its successor in function;
- 1.1.11 "Change in CCPI" means the percentage change in the monthly CCPI published immediately prior to the date of Previous Sale to the monthly CCPI published immediately prior to the date of contracting for next sale, assignment or other transfer. Where the CCPI has increased since the date of Previous Sale, the Change in CCPI is positive. Where the CCPI has decreased since the date of Previous Sale, the Change in CCPI is negative;
- 1.1.12 "CRD" has the meaning stated in Recital C;
- 1.1.13 "Developer" has the meaning stated in Recital A;
- 1.1.14 "Fair Market Value" of an Affordable Unit means the purchase price from time to time which a willing purchaser would pay to a willing vendor, dealing at arm's length from each other, for an Affordable Unit, without the benefit of a parking stall or other parking entitlement;
- 1.1.15 "First Purchaser" means the person to whom the interest in an Affordable Unit is first transferred after issuance of the Occupancy Permit for the Affordable Unit;
- 1.1.16 "First Sale" means the first transfer of an interest in the Affordable Unit to the First Purchaser.
- 1.1.17 "General Instrument - Part 1" means the General Instrument - Part 1 to which this Terms of Instrument - Part 2 is attached;

- 1.1.18 "Immediate Family" means grandparent, parent, sibling, spouse, common-law partner, son or daughter;
- 1.1.19 "Insured Mortgage" means a mortgage insured pursuant to the *National Housing Act*, R.S.C. 1985, c. N-11;
- 1.1.20 "LTO" means the Land Title Office for the jurisdiction in which an Affordable Unit is located;
- 1.1.21 "Maximum Price" means, at the time of the First Sale the Maximum Price, First Sale and at the time of any subsequent sale of an Affordable Unit, the Maximum Price, Resale;
- 1.1.22 "Maximum Price, First Sale" means the sale price for the sale of the Affordable Unit to the First Purchaser determined in accordance with Schedule "C".
- 1.1.23 "Maximum Price, Resale" means the Previous Sale Price plus the product of the Previous Sale Price multiplied by the Change in CCPI. Where the Change in CCPI is negative or cannot be determined, the Maximum Price, Resale shall be the Previous Sale Price and where the Maximum Price, Resale exceeds the Fair Market Value, less 15%, then the Maximum Price, Resale shall be the Fair Market Value less 15%;
- 1.1.24 "Previous Sale" means the last sale, assignment or other transfer of the Affordable Unit to an Owner;
- 1.1.25 "Previous Sale Price" means the sale price of the Previous Sale;
- 1.1.26 "NPO" means the Capital Region Housing Corporation or other non-profit housing organization or Person retained by CRD from time to time to administer the sale of the Affordable Units and to manage the rental of the Affordable Units;
- 1.1.27 "NPO Appraisal" has the meaning stated in Schedule "C";
- 1.1.28 "Occupancy Permit" means a permit permitting occupancy of the Project as issued pursuant to the Township of Esquimalt Building Regulation Bylaw, 2017, No. 2899;
- 1.1.29 "Option" means the option to purchase and right of first refusal granted by the Owner to CRD in substantially the form attached hereto as Schedule "D";
- 1.1.30 "Owner" means the registered owner of an Affordable Unit from time to time and includes the Developer in its capacity as developer of the Affordable Units until the First Sale;
- 1.1.31 "Owner Appraisal" has the meaning stated in Schedule "C";
- 1.1.32 "Permitted Encumbrances" means those charges or encumbrances stated in Schedule "A" and any other encumbrances approved as required by the Township of Esquimalt or Developer from time to time to complete the Strata Development or as in writing by CRD but shall not include any mortgage or other financial encumbrance and shall not include this Agreement;
- 1.1.33 "Person" means any individual, society, corporation, partnership, trustee, administrator,

legal representative, Statutory Authority or other legal entity;

1.1.34 "Proceeding" has the meaning stated in Section 2.3.1;

1.1.35 "Project" means the Strata Development of which the Affordable Units will be a part and comprises all of the Lands referred to in Item 2 of the General Instrument - Part 1;

1.1.36 "Qualified Buyer" means an individual who meets the criteria stated in Schedule "B";

1.1.37 "Statutory Authority" means any federal, provincial or municipal governmental authority which has jurisdiction over any matter referred to in this Agreement;

1.1.38 "Term" means the period commencing on the date of registration of this Agreement in the LTO and ending on the earlier of (a) the date which is ninety- nine (99) years thereafter, and (b) the date of any destruction or statutorily deemed destruction of the Project.

1.2 **Notice of Housing Agreement.** The Owner acknowledges and agrees that:

1.2.1 this Agreement constitutes both a covenant under Section 219 of the *Land Title Act* and a housing agreement entered into under Section 483 of the *Local Government Act*;

1.2.2 the CRD is required to file a notice of housing agreement in the Land Title Office against title to the Lands; and

1.2.3 once such notice is filed, this Agreement binds all persons who acquire an interest in the Lands as a housing agreement under Section 483 of the *Local Government Act*.

1.3 **Time.** Time will be of the essence of this Agreement. If any party expressly or impliedly waives this requirement, that party may reinstate it by delivering notice to the other party. If a time is specified in this Agreement for observing or performing any obligation, such time will be local time in Victoria, British Columbia.

1.4 **Governing Law.** This Agreement will be governed by and construed and enforced in accordance with the laws of British Columbia and the laws of Canada applicable in British Columbia.

1.5 **References.** In this Agreement, words importing the singular include the plural and vice versa, and words importing gender include all genders.

1.6 **Construction.** The division of this Agreement into sections and the use of headings are for convenience of reference only and are not intended to govern, limit or aid in the interpretation of this Agreement. The wording of this Agreement will be construed simply, according to its fair meaning, and not strictly for or against any party.

1.7 **Validity of Provisions.** If a Court of competent jurisdiction finds that any provision contained in this Agreement is invalid, illegal or unenforceable, such invalidity, illegality or unenforceability will not affect any other provision of this Agreement which will be construed as if such invalid, illegal or unenforceable provision had never existed and such other provisions will be enforceable to the fullest extent permitted at law.

1.8 **No Waiver.** Failure by either party to exercise any of its rights, powers or remedies hereunder or

its delay to do so, will not be interpreted as a waiver of those rights, powers or remedies except in the case of a written waiver. No waiver of a particular right will be deemed to be a waiver of that right in any other instance or a waiver of any other right.

- 1.9 **Statutes**. Any reference to a statute and to any regulations under that statute means the statute and regulations as amended or replaced from time to time.
- 1.10 **Remedies**. Any party to this Agreement, in addition to its rights under this Agreement or at law, will be entitled to all equitable remedies including specific performance, injunction and/or declaratory relief, to enforce its rights under this Agreement. No reference to or exercise of any specific right or remedy under this Agreement or at law or in equity by any party will prejudice or preclude that party from exercising any other such right or remedy. No such right or remedy will be exclusive or dependent upon any other such right or remedy, but any party, from time to time, may exercise any one or more of such rights or remedies independently, successively or in combination. The Owner acknowledges that specific performance, injunctive relief (mandatory or otherwise) or other equitable relief may be the only adequate remedy for a default by the Owner under this Agreement.
- 1.11 **Schedules**. The following Schedules are attached to and form integral parts of this Agreement:
- Schedule "A" Permitted Encumbrances
  - Schedule "B" Qualified Buyer Criteria
  - Schedule "C" Maximum Price, First Sale
  - Schedule "D" Option

## SECTION 2. SECTION 219 COVENANT & HOUSING AGREEMENT

- 2.1 **Covenant**. The Owner hereby covenants with CRD that:
- (a) each Affordable Unit will not be sold, assigned or otherwise transferred otherwise than:
    - (i) to a Qualified Buyer;
    - (ii) for a selling price not greater than the Maximum Price;
    - (iii) in accordance with this Agreement and the Option; and
    - (iv) in a way which complies with Section 2.2, or to CRD under the Option;
  - (b) the Affordable Unit will not at any time be subject to a conventional high ratio mortgage or mortgages which, in total, secure an amount which exceeds 95% of the Maximum Price;
  - (c) the Owner shall not permit (whether by renting or otherwise) any person other than the Owner and members of the owner's Immediate Family to occupy the Affordable Unit, and shall not use or permit the premises to be used solely for conducting a business or profession;
  - (d) the Owner will do everything necessary, at the Owner's expense, to ensure that this Agreement and an Option, if required by the CRD, will be registered against title to the

Lands in priority to all charges and encumbrances which may have been registered or are pending registration against title to the Lands save and except those specifically approved in writing by the CRD or in favour of the CRD,

and the Owner and CRD agree that, subject to Section 2.3 the covenant set out above will be registered as a charge against the Affordable Unit and run with the Affordable Unit for the Term.

## 2.2 **Procedure for First Sale and Subsequent Sale of Affordable Unit.**

### 2.2.1 **Developer Notifies NPO of Intention to Sell**

The First Sale shall be in accordance with a bona fide arm's length agreement of purchase and sale and the Owner will, prior to:

- (a) listing or offering the Affordable Unit for sale; or
- (b) accepting an offer to purchase the Affordable Unit,

deliver to the NPO written notice of their intention to sell an Affordable Unit, such notice to be in the form required by the NPO and determine the Maximum Price, First Sale in accordance with Schedule "C" hereto.

### 2.2.2 **Owner Notifies NPO of Intention to Sell.**

If at any time after the First Sale, the Owner wishes to sell, assign or otherwise transfer the Affordable Unit, the Owner will do so in accordance with a bona fide arm's length agreement of purchase and sale (or as a court may order in a proceeding to enforce a mortgage of the Affordable Unit) and the Owner will, prior to:

- (c) listing or offering the Affordable Unit for sale; or
- (d) accepting an offer to purchase the Affordable Unit,

deliver to the NPO written notice of their intention to sell an Affordable Unit, such notice to be in the form required by the NPO.

### 2.2.3 **Owner Responsible for Appraisal Costs.**

The Owner will be responsible for the cost of both the Owner Appraisal and the NPO Appraisal. If the cost of the NPO Appraisal is initially paid by the NPO, the Owner will reimburse the NPO for the cost of the NPO Appraisal within 30 days after demand by the NPO. If any amount owed by the Owner to the NPO with respect to the NPO Appraisal is not paid prior to the completion of the sale of the Affordable Unit by the Owner, a portion of the sale proceeds equal to the amount owing to the NPO will be deemed to have been irrevocably assigned by the Owner to the NPO.

### 2.2.4 **Maximum Purchase Price**

The Owner covenants and agrees that the purchase price for any sale, assignment or other transfer of an Affordable Unit shall not exceed the Maximum Price. In addition to

the Maximum Price, the Owner will be entitled to charge the Qualified Buyer the Administration Fee.

**2.2.5 Owner to Deliver True Copy of Sale Contract to NPO.**

For each sale of an Affordable Unit, the Owner will immediately deliver a true copy of any contract of purchase and sale which the Owner may enter into with respect to the sale of the Affordable Unit or any interest therein (the "Sale Contract"). The Owner will deliver to the NPO with the Sale Contract, or upon the request of the NPO, such information with respect to the buyer named in the Sale Contract as the NPO may reasonably require to determine whether the buyer is a Qualified Buyer.

**2.2.6 Terms to be Included in Sale Contract.**

The Sale Contract will be in writing and will:

- (a) be for a selling price not greater than the Maximum Price of the Affordable Unit;
- (b) include as a true condition precedent that the seller's obligation to sell is subject to the NPO determining and notifying the Owner in writing (within a period of 10 Business Days after the NPO receives a true copy of the Sale Contract) that (1) the Owner has complied with the requirements of this Section 2.2, and (2) the buyer is a Qualified Buyer, failing which the Sale Contract will be null and void; and
- (c) include as a true condition precedent that the seller's obligation to sell is subject to the seller notifying the buyer in writing that the CRD has approved the terms of the sale of the Affordable Unit to the buyer and that the CRD has decided not to exercise its right of first refusal or option to purchase the Affordable Unit with respect to this transaction only;
- (d) require the buyer to execute an agreement with the CRD, as a condition of closing, under which the buyer agrees that its purchase of the Affordable Unit is subject to the terms of this Agreement and the Option.

**2.2.7 No Sale after 6 Months Without New Appraisal.**

At the time of the First Sale, the NPO will not be obligated to review or make any determination with respect to a Sale Contract as stated in subsection 2.2.6(b) above if the date of receipt by the NPO of a true copy of the Sale Contract is after the expiry of the 6-month period during which the Owner is permitted to sell the Affordable Unit. If the 6-month period has expired, the process under Schedule "C" will begin again, with the Owner giving fresh notice to the NPO of their intention to sell the Affordable Unit.

**2.2.8 CRD Will Notify Owner of Change in NPO.**

CRD will notify the Owner in writing of any appointment or replacement of an NPO and of the address to which notices to the NPO will be sent.

### 2.2.9 **Fee to NPO**

The NPO will be entitled to payment of a fee equal to 0.5% of the gross selling price of an Affordable Unit (the "Administration Fee"), such Administration Fee to be paid on closing of the sale of such Affordable Unit by the Owner and a portion of the sale proceeds equal to the amount owing to the NPO will be deemed to have been irrevocably assigned by the Owner to the NPO.

## 2.3 **Procedure for Foreclosure.**

### 2.3.1 **CRD Right to Market and Sell.**

If the Approved Lender or CMHC commences a foreclosure proceeding (the "Proceeding") under an Insured Mortgage of the Affordable Unit the Owner covenants and agrees with CRD that:

- (a) the Owner shall notify CRD of the Proceeding;
- (b) at the time which is the midpoint of any redemption period (the "Redemption Period") ordered in the Proceeding, CRD shall have the right and may apply for an order in the Proceeding, unopposed by the Owner, to market and sell the Affordable Unit in accordance with Section 2.1(a)(i), (ii), (iii) and (iv);
- (c) on receipt of the order in the Proceeding under Section 2.3.1(b) CRD shall have the right to enter into an agreement with a licensed realtor to market and sell the Affordable Unit at the prevailing commission or fee; and
- (d) the Owner shall provide reasonable access to the Affordable Unit by CRD, the licensed realtor and any prospective purchaser of the Affordable Unit for the purpose of repairing, cleaning, appraising, marketing and selling the Affordable Unit.

### 2.3.2 **CMHC Notice to CRD.**

In the event that CRD does not sell the Affordable Unit pursuant to Section 2.3.1, CMHC or the Approved Lender may, 120 days after expiry of the Redemption Period ordered in the Proceeding, issue a 30 day notice (the "Notice Period") to CRD to redeem the Insured Mortgage. In the event that CRD does not redeem the Insured Mortgage within the Notice Period, CRD shall cause this Agreement to be discharged from title to the Affordable Unit at the LTO within 7 days of expiry of the Notice Period.

### 2.3.3 **CMHC Sale.**

In the event that the Affordable Unit is sold by the Approved Lender or CMHC after discharge of this Agreement from title to the Affordable Unit and such sale generates funds in excess of the balance owing under the Insured Mortgage and related costs, including charges, taxes, commissions and utilities regarding the Affordable Unit, such excess funds shall forthwith be paid to CRD, for its own use absolutely. This Section 2.3.3 shall bind the Owner, the Approved Lender, CMHC (where CMHC has a mortgage loan insurance policy in force for the Affordable Unit) and CRD both before and after discharge of this Agreement

from title to the Affordable Unit.

## 2.4 **Procedure for Rental and Recovery of Rent Charges.**

### 2.4.1 **Rental Prohibited.**

2.4.1.1 All rentals of the Affordable Units are prohibited, except:

- (a) In the case of hardship, as decided by the NPO in its sole discretion, and on making an application to the NPO in the form provided by the NPO, if any, an Affordable Unit may be rented at an Affordable Rate for a period no shorter than six months; or
- (b) If a Qualified Buyer cannot be located, as decided by the NPO in its sole discretion, and on making an application to the NPO in the form provided by the NPO, if any, an Affordable Unit may be rented at an Affordable Rate for a period no shorter than six months.

2.4.1.2 The maximum term of any rental shall be two years, at which point the Affordable Unit must be listed for sale in accordance with section 2.2. Rental may continue at an Affordable Rate at the discretion of the NPO. If hardship continues or a Qualified Buyer cannot be located after this listing, additional sales listings may be required at any time at intervals decided by the NPO at its discretion.

2.4.1.3 Any tenancy shall be governed by an agreement under the *Residential Tenancy Act* (BC) which shall include the following provisions, as material terms to the tenancy agreement:

- (a) permitting the Owner to terminate the tenancy agreement in accordance with the *Residential Tenancy Act* if the tenant uses or occupies, or allows use or occupation of, the Affordable Unit in breach of the use or occupancy restrictions contained in this Agreement;
- (b) explicitly prohibiting the assignability, sub-letting, and use of the Affordable Unit for short term vacation rentals;
- (c) explicitly specifying that only persons named in the tenancy agreement may occupy the Affordable Unit;
- (d) providing that the Owner will have the right, at its option and subject to the *Residential Tenancy Act*, to terminate the tenancy agreement should the tenant remain absent from the Affordable Unit for three consecutive months or longer, notwithstanding the timely payment of rent;
- (e) prohibiting guests residing in the Affordable Unit for more than 30 days, whether or not consecutive, in any 12 month period without the prior written consent of the Owner; and
- (f) prohibiting use of the Affordable Unit for non-residential rentals, assignments, sub-lets, licenses and uses, such as vacation rentals,

including such services as AirBNB or Vacation Rental By Owner, short term licenses, or short-stay use of any kind, and business-only premises.

2.4.1.4 The Owner will terminate the tenancy if the tenant uses or occupies, or allows use or occupancy, in breach of the use and occupancy restrictions in this Agreement.

#### **2.4.2 Rent Charge and Acknowledgement.**

2.4.2.1 The Owner acknowledges that the CRD requires affordable housing to ensure prosperity and economic growth for the residents of the Capital Regional District. The Owner acknowledges the purpose of the Affordable Unit is to provide affordable housing to residents of the Capital Regional District, and it is not to be used for a short term vacation rental or left as a vacant home. The Owner therefore agrees that for each day an Affordable Unit is occupied in breach of this Agreement, the Owner will pay to the CRD \$150 for each day on which the breach has occurred and continues to occur, as liquidated damages and not as a penalty, due and payable at the offices of the CRD on the last day of the calendar month in which the breach occurred. The \$150 per day amount will increase on January 1 of each year by the amount calculated by multiplying the amount per day payable on the previous January 1 by the percentage increase between that previous January 1 and the immediately preceding December 31 in the CCPI.

2.4.2.2 The Owner hereby grants to the CRD a rent charge under s. 219 of the *Land Title Act* (British Columbia), and at common law, securing payment by the Owner to the CRD of the amount payable by the Owner pursuant to section 2.4.2 of this Agreement. The Owner agrees that the CRD, at its option, may enforce payment of such outstanding amount in a court of competent jurisdiction as a contract debt, by an action for and order for sale, by proceedings for the appointment of a receiver, or in any other method available to the CRD in law or in equity.

### **SECTION 3. INDEMNITY AND RELEASE**

- 3.1 **Indemnity.** The Owner indemnifies the CRD and its officers, directors, employees and agents and their respective heirs, executors, administrators, personal representatives, successors and assigns from any claims which anyone has or may have against the CRD or which the CRD incurs as a result of any loss, damage, deprivation, enrichment or injury, including economic loss, arising out of or connected with the restrictions or requirements of this Agreement, the breach of any covenant in this Agreement, the granting of any approvals or advice or direction respecting the sale of the Affordable Unit or use of the Affordable Unit given to the Owner by any of them or by the NPO.
- 3.2 **Release.** The Owner releases CRD and its officers, directors, employees and agents and their respective heirs, executors, administrators, personal representatives, successors and assigns absolutely and forever, from any claims the Owner may have against all or any of them for costs, expenses or damages the Owner may suffer, incur or be put to arising out of or in connection with this Agreement and from all claims arising out of or connected with the restrictions or requirements of this Agreement, the breach of any covenant in this Agreement, the granting of any approvals or advice or direction respecting the sale of the Affordable Unit or use of the Affordable Unit given

to the Owner by any of them or by the NPO.

#### **SECTION 4. GENERAL PROVISIONS**

- 4.1 **Discharge of Covenant on Strata Lots not designated as Affordable Units**. The parties agree that this Agreement is intended to only apply to the ten (10) strata lots to be designated by the Developer as the Affordable Units upon the filing of the strata plan for the Strata Development and concurrently with filing of the strata plan for the Strata Development this Covenant, the Rent Charge and the Option to Purchase shall be discharged from title to all of the strata lots and the common property except for the ten (10) Affordable Units designated by the Developer, and this Agreement will only charge the Affordable Units. The parties will execute all such documents as may be required to complete the foregoing discharges.
- 4.2 **Notices**. Unless otherwise specified, each notice to the Owner must be given in writing and delivered personally or by courier to the Owner at its address shown on title to the Affordable Unit as registered in the LTO from time to time. Unless otherwise specified, each notice to CRD must be given in writing and delivered personally or by courier to CRD, Attention: Manager Real Estate Services, at the address shown on the General Instrument - Part 1 or to such other address or addresses or person or persons as CRD may designate. Notices will be deemed to have been received when delivered.
- 4.3 **Fees**. Each of the Owner and CRD will pay its own legal fees.
- 4.4 **Enuring Effect**. This Agreement will enure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and permitted assigns as the case may be of the Owner and CRD, provided that the Owner shall not be liable for any breach of the covenant contained in Section 2.1 except as such liability relates to the period of ownership of an Affordable Unit by the Owner.
- 4.5 **Registration**. This Agreement will be registered against title to the Lands initially and then shall be restricted to the titles to the Affordable Units upon filing of a strata plan of the Lands in the LTO subject only to Permitted Encumbrances.
- 4.6 **Discharge**. On expiry of the Term, the Owner may require that CRD execute and deliver to the Owner a release in registrable form of the Covenant and the Option.
- 4.7 **Amendment**. This Agreement may only be amended by written agreement of the parties.
- 4.8 **Counterparts**. This Agreement and any amendment, supplement, restatement or termination of any provision of this Agreement may be executed and delivered in any number of counterparts, each of which, when executed and delivered is an original, but all of which taken together constitute one and the same instrument.

IN WITNESS WHEREOF the parties have duly executed this Agreement by signing the General Instrument - Part 1.

**CONSENT AND PRIORITY AGREEMENT**

NATIONAL BANK OF CANADA (the "Lender"), as the registered holder of a mortgage and assignment of rents registered in the Land Title Office under numbers CA9335107 and CA9335108 (together, the "Mortgage and Assignment of Rents"), for and in consideration of the sum of One Dollar (\$1.00) paid by the Transferee to the Lender (the receipt whereof is hereby acknowledged), agrees with the Transferee, its successors and assigns, that the covenant herein granted will be an encumbrance on the Land in priority to the Mortgage and Assignment of Rents, in the same manner and to the same effect as if it had been dated and registered before the Mortgage and Assignment of Rents.

**CONSENT AND PRIORITY AGREEMENT**

SUKHPAL SINGH SIDHU (the "Lender"), as the registered holder of a mortgage and assignment of rents registered in the Land Title Office under numbers CA9335174 and CA9335175 (together, the "Mortgage and Assignment of Rents"), for and in consideration of the sum of One Dollar (\$1.00) paid by the Transferee to the Lender (the receipt whereof is hereby acknowledged), agrees with the Transferee, its successors and assigns, that the covenant herein granted will be an encumbrance on the Land in priority to the Mortgage and Assignment of Rents, in the same manner and to the same effect as if it had been dated and registered before the Mortgage and Assignment of Rents.

IN WITNESS WHEREOF the parties have executed this Agreement on Form C, to which this Agreement is attached and which forms a part of this Agreement, effective as of the date first above written.

**SCHEDULE "A"**  
**PERMITTED ENCUMBRANCES**

Legal Notations:

None

Charges, Liens and Interests:

None

**SCHEDULE "B"**  
**QUALIFIED BUYER CRITERIA**

**1. Sale of an Affordable Unit by the Developer:**

In the case of the sale of an Affordable Unit by the Developer, a Qualified Buyer means:

- (a) a first time home buyer, being a buyer who has not owned a principal residence for at least 5 years immediately prior to the date of purchase of an Affordable Unit;
- (b) a resident of the Capital Regional District from time to time, for at least one year immediately prior to the date of purchase of an Affordable Unit;
- (c) A person who provides Proof of Income that their household's annual gross Income is, for at least one year immediately prior to the date of purchase of an Affordable Unit, within BC Housing Low and Moderate Income Limits, as determined by size of unit; and
- (d) a person who intends to immediately use and occupy the Affordable Unit as their principal residence and not rent or lease the Affordable Unit to any other person, nor leave the unit vacant, use it solely for a business or profession, or use it as a short-term vacation rental property of any kind

it being understood and agreed that preferential consideration may be given to a person who meets all of the above criteria and all or some of the following criteria:

- (a) a person who does not own a vehicle; and
- (b) a person who satisfies such other criteria as may be applied by the NPO and CRD from time to time.

**2. Sale of an Affordable Unit by an Owner other than the Developer:**

In the case of the sale of an Affordable Unit by an Owner other than the Developer, a Qualified Buyer means:

- (a) a first time home buyer, being a buyer who has not owned a principal residence for at least 5 years immediately prior to the date of purchase of an Affordable Unit;
- (b) a resident of the Capital Regional District from time to time, for at least one year immediately prior to the date of purchase of an Affordable Unit;
- (c) A person who provides Proof of Income that their household's annual gross Income is, for at least one year immediately prior to the date of purchase of an Affordable Unit, within BC Housing Low and Moderate Income Limits, as determined by size of unit; and
- (d) a person who intends to immediately use and occupy the Affordable Unit as their principal residence and not rent or lease the Affordable Unit to any other person, nor leave the unit vacant, use it solely for a business or profession, or use it as a short-term vacation rental property of any kind.

For the purpose of Schedule "B":

"Income" means the total income before income tax from all sources of all persons intending to live in an Affordable Unit including, without limitation:

- (a) all income from earnings, including commissions and tips;
- (b) all income from all public and private pension plans, old age security and guaranteed income supplement;
- (c) all income received under the *Employment and Assistance Act* and the *Employment and Assistance for Persons with Disabilities Act*;
- (d) disabled veteran's allowance;
- (e) alimony;
- (f) child support;
- (g) workers' compensation benefits;
- (h) employment insurance; and
- (i) Income from Assets,

but excluding the following:

- (a) child tax benefit;
- (b) capital gains, such as insurance settlement, inheritances, disability awards and sale of effects in the year they are received;
- (c) the earnings of a person aged 18 and under;
- (d) student loans, student loan equalization payments and student grants but excluding non-repayable training allowances, research fellowships or similar grants;
- (e) shelter aid for elderly renters (SAFER) or rental assistance program (RAP) payments received prior to purchasing an Affordable Unit;
- (f) GST rebates;
- (g) taxable benefits received through employment;
- (h) government provided daycare allowance; and
- (i) payments for foster children, or child in home of relative (CIHR) income under the *Employment and Assistance Act*.

"Income from Assets" means computing income from assets of all persons intending to live in an Affordable Unit at a percentage per annum as determined by CRD, excluding the first \$62,051.00

in assets of such persons, based on November 1, 2018 dollars, indexed over time by reference to changes from time to time in the consumer price index (all items, British Columbia) or if such consumer price index is no longer published, such substitute and comparable index as the NPO may designate.

"Proof of Income" means a tax return filed with Canada Revenue Agency or a notice of assessment from Canada Revenue Agency under the *Income Tax Act*.

**SCHEDULE "C"**  
**MAXIMUM PRICE, FIRST SALE**

The Maximum Price for the First Sale shall be determined as follows:

1. Within 7 days after the Owner delivers the notice, as required by section 2.2.1, the Owner will select an Appraiser to be retained by the Owner to undertake an appraisal (the "Owner Appraisal") of the Fair Market Value of the Affordable Unit. The Owner will deliver a copy of the Owner Appraisal to the NPO within 7 days after the Owner receives the Owner Appraisal.
2. If the Owner and the NPO agree within 7 days after the Owner Appraisal is delivered to the NPO that the Fair Market Value of the Affordable Unit is as stated in the Owner Appraisal, the Fair Market Value stated in the Owner Appraisal, less 15%, will be the maximum price at which the Owner will be permitted to sell the Affordable Unit during a period of 6 months commencing on the effective date of the Owner Appraisal.
3. If the Owner and the NPO do not agree within 7 days (the "Appraisal Review Period") after the Owner Appraisal is delivered to the NPO that the Fair Market Value of the Affordable Unit is as stated in the Owner Appraisal, the NPO will retain its own Appraiser to undertake an appraisal (the "NPO Appraisal") of the Fair Market Value of the Affordable Unit in which case the average of the Fair Market Value stated in the Owner Appraisal and the NPO Appraisal, less 15%, will be the maximum price at which the Owner will be permitted to sell the Affordable Unit during a period of 6 months commencing on the effective date of the NPO Appraisal.
4. The NPO will deliver a copy of the NPO Appraisal to the Owner within 7 days after the NPO receives the NPO Appraisal.
5. If the NPO Appraisal is not delivered to the Owner within 30 days after the end of the Appraisal Review Period, the Fair Market Value stated in the Owner Appraisal, less 15%, will be the maximum price at which the Owner will be permitted to sell the Affordable Unit during a period of 6 months commencing on the effective date of the Owner Appraisal.

**SCHEDULE "D"  
OPTION**

## TERMS OF INSTRUMENT - PART 2

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### RIGHT OF FIRST REFUSAL AND OPTION TO PURCHASE

#### WHEREAS:

- A. The Owner is the registered owner in fee-simple of those lands and premises located within the Capital Regional District, in the Province of British Columbia, more particularly described as:

**TBD**  
(the "Lands")

- B. The Owner has entered into a Housing Agreement with the Capital Regional District (the "CRD") under section 483 of the *Local Government Act* and has granted to the CRD a Covenant under section 219 of the *Land Title Act* with registration number \_\_\_\_\_ relating to certain restrictions on the use of the Land (collectively, the "Housing Agreement");
- C. Pursuant to the terms of the Housing Agreement, the Owner has agreed to use and occupy the Lands for the purposes of the Affordable Units on the Lands; and
- D. In order to ensure that the Affordable Unit is occupied and disposed of in accordance with the Housing Agreement, the Owner agrees to grant to the CRD a right of first refusal to purchase and an option to purchase the Affordable Unit on the terms and conditions set out in this Agreement.

**THIS AGREEMENT** is evidence that in consideration of the mutual promises contained in it and in consideration of the payment of \$2.00 by the CRD to the Owner, the receipt of sufficiency of which is hereby acknowledged by the Owner, the parties agree as follows:

#### PART I – DEFINITIONS

1. In this Agreement the following words have the following meanings:
- a. "Affordable Unit" means a Dwelling Unit designated as an affordable unit in accordance with the Housing Agreement, to be used, occupied and Disposed of in accordance with the Housing Agreement.
  - b. "Agreement" means this Agreement together with the General Instrument.
  - c. "Approved Lender" means an "approved lender" (as defined in the *National Housing Act*, R.S.C. 1985, c. N-11) which holds an Insured Mortgage of an Affordable Unit.
  - d. "Bona Fide Offer" means an offer to purchase the Owner's Interest in the Affordable Unit:
    - i. in writing;

- ii. signed by an Outside Offeror;
  - iii. in a form legally enforceable against the Outside Offeror and subject to no conditions except for the CRD's Subjects;
  - iv. for a purchase price that is at or below the Maximum Price;
  - v. providing that if the CRD does not exercise its right of first refusal as set forth in this Agreement, the Outside Offeror will grant to the CRD a right of first refusal and option to purchase the Lands upon the same terms and conditions as are set forth in this Agreement;
  - vi. providing that the Outside Offeror will not assign or transfer the contract for the purchase of the Affordable Unit; and
  - vii. confirming that the Outsider Offeror has read and understood the terms of this Agreement, the Housing Agreement and all other charges in favour of the CRD that are registered in the LTO against the Lands and that the Outside Offeror agrees to be bound by the owner's obligations pursuant to such charges.
- e. "Business Day" means Monday to Friday inclusive except for those excluded days declared by lawful authority as holidays, excluding any date that the LTO is not open for business.
- f. "Closing Date" means the 30th day after the Notice Date, or the first Business Day thereafter that the LTO is open for business to the public.
- g. "CRD's Subjects" mean the following clauses:

The obligation of the seller to complete the transaction contemplated herein is subject to the following (the "Seller's Conditions"):

- i. the seller notifying the buyer in writing, not later than \_\_\_\_\_ that the Capital Regional District has approved the terms of the sale of the Land to the buyer and that the Capital Regional District has decided not to exercise its right of first refusal and option to purchase the Land with respect to this transaction only; and
- ii. the Capital Regional District determining and notifying the Owner in writing no later than \_\_\_\_\_ that the Owner has complied with the requirements of the Housing Agreement regarding the sale, and that Capital Regional District is satisfied that the buyer is a Qualified Buyer as defined in the Housing Agreement.

The Seller's Conditions are for the sole benefit of the seller and may be satisfied by the seller by notice in writing to the buyer. If the Seller's Conditions are not satisfied on or before the date specified for their removal, this agreement will automatically be terminated, the deposit will be returned to the buyer, and neither party will have any further obligation to the other under this agreement.

- h. "Dispose" means to transfer by any method, and includes assign, give, sell, grant, charge, convey, bequeath, devise, lease, rent or sublet, divest, release, and agree to do any of those things.
- i. "Dwelling Units" means all residential dwelling units located or to be located on the Land whether those dwelling units are lots, strata lots or parcels, or parts or portions thereof, into which ownership or right of possession or occupation of the Land may be Subdivided.
- j. "Environmental Law" means any applicable federal, provincial or municipal laws pertaining to the presence, handling, release or removal of Hazardous Substances.
- k. "General Instrument" means the Form C under the Land Title (Transfer Forms) Regulation, to which this Agreement is attached.
- l. "Hazardous Substances" collectively means contaminants, pollutants or other substances which are hazardous or dangerous to the health of humans, animals or plants or to the environment and includes substances defined as hazardous substances or special waste under any law, regulation or order of a Statutory Authority.
- m. "Insured Mortgage" means a mortgage insured pursuant to the *National Housing Act*, R.S.C. 1985, c. N-11.
- n. "Interest" means the property interest of the Owner in the Affordable Unit.
- o. "LTO" means the Victoria Land Title Office or its successor.
- p. "Maximum Price" has the meaning given to it in the Housing Agreement.
- q. "Notice" means any written notice which CRD may deliver to the Owner under Section 8.
- r. "Notice Date" means the day on which the Owner is deemed by Section 41 to have received the Notice.
- s. "Outside Offeror" means a purchaser or prospective purchaser of the Affordable Unit who deals at arm's length with the vendor of the Affordable Unit.
- t. "Owner" means the Transferor described in the General Instrument and any subsequent owner of the Land or of any part into which the Land is Subdivided, and includes any person who is a registered owner in fee simple of an Affordable Unit from time to time.
- u. "Option Purchase Price" has the meaning given to it at section 12.
- v. "Personal Property" means all lighting fixtures, appliances, equipment, cabinetry, affixed carpeting, drapes and blinds located within an Affordable Unit (except to the

extent otherwise agreed in writing by CRD) but does not include an Owner's personal effects.

- w. "Permitted Encumbrances" means those charges or encumbrances stated in Schedule "A" and any other encumbrances approved in writing by CRD but shall not include any mortgage or other financial encumbrance and shall not include this Agreement.
  - x. "Person" means any individual, society, corporation, partnership, trustee, administrator, legal representative, Statutory Authority or other legal entity.
  - y. "Project" means the Strata Development of which the Affordable Units will be a part and comprises all of the Lands referred to in Item 2 of the General Instrument - Part 1.
  - z. "Property" means the Affordable Unit and all Personal Property within the Affordable Unit.
  - aa. "Qualified Buyer" means an individual who meets the criteria stated in Schedule "B" of the Housing Agreement registered against title to the Land.
  - bb. "Subdivide" means to divide, apportion, consolidate or subdivide the Land, or the ownership or right to possession or occupation of the Land into two or more lots, strata lots, parcels, parts, portions or shares, whether by plan, descriptive words or otherwise, under the *Land Title Act*, the *Strata Property Act*, or otherwise, and includes the creation, conversion, organization or development of "cooperative units" or "shared interests in land" as defined in the *Real Estate Act*.
  - cc. "Transfer" means an instrument in a statutorily prescribed form by which the Owner transfers title to the Affordable Unit to CRD.
  - dd. "Transaction" means transfer of an Affordable Unit from the Owner to CRD.
2. **Schedules.** The following Schedules are attached to and form integral parts of this Agreement:

Schedule "A" Permitted Encumbrances

## **PART II – GENERAL**

- 3. During the Term, the Owner covenants and agrees that the Owner will not Dispose of its Interest in any Affordable Unit unless such Interest is Disposed of in accordance with this Agreement and the Housing Agreement.
- 4. The Owner will not Dispose of its Interest in the Affordable Unit other than to the CRD or to an Outside Offeror pursuant to a Bona Fide Offer.
- 5. Provided that the Owner is not in breach of any of its obligations under this Agreement or under the Housing Agreement, at the request of the Owner and the Owner's sole expense, the CRD will deliver to the Owner discharges of this Agreement in registrable form for each Dwelling Unit that:

- a. is a separate legal parcel; and is not an Affordable Unit; and
- b. is not an Affordable Unit.

### **PART III – RIGHT OF FIRST REFUSAL**

6. The Owner covenants and agrees as follows:

- a. the Owner will not sell or offer to sell the Affordable Unit for any consideration not consisting entirely of lawful money of Canada;
- b. if the Owner receives an offer to purchase the Affordable Unit (the “Offer”) which the Owner is willing to accept, then the Owner will offer to sell the Affordable Unit to the CRD on the terms that are set out in Part 5 of this Agreement, by giving to the CRD a notice in writing (the “RFR Notice”) attached to a copy of the Offer. The CRD will have the exclusive right for ten (10) Business Days (the “Election Period”) from the date on which the CRD receives from the Owner the RFR Notice and a copy of the Offer within which to purchase the Affordable Unit on the terms set out in Part V of this Agreement. The Owner agrees that the CRD’s Election Period to purchase the Affordable Unit will not start to run until the Owner gives to the CRD notice of the Offer;
- c. If the CRD wishes to exercise this right of first refusal, the CRD will give the Owner written notice of such exercise on or before the end of the Election Period.
- d. If the CRD does not exercise this right of first refusal with respect to a specific Offer, the CRD’s rights under this right of first refusal with respect to the particular Offer will be waived, but only if the Offer is a Bona Fide Offer and only if the terms of sale between the Outside Offeror and the Owner are in strict compliance with the terms stated in the Offer, and if the Owner complies with the following requirements:
  - i. the Owner delivers to the CRD, within 10 Business Days after the delivery of the RFR Notice written proof, satisfactory to the CRD, in its sole discretion and including but not limited to the information required under Schedule B of the Housing Agreement, that the purchaser is a Qualified Buyer, and that the person agrees to be bound by all the agreements in favour of the CRD which affect the Affordable Unit, including but not limited to the Housing Agreement;
  - ii. the Owner does not remove the second part of the CRD’s Subject until such time as the CRD informs the Owner that it is satisfied with the information provided pursuant to sub-section 5.d.i herein;
  - iii. at least 5 Business Days before completion of the sale pursuant to the Bona Fide Offer the Owner delivers to the CRD the following:

- (1) written proof, satisfactory to the CRD, in its sole discretion, that the purchase price payable under the Bona Fide Offer is the Maximum Price;
  - (2) a signed Form C granting to the CRD an option to purchase and a right of first refusal to purchase the Affordable Unit (the "New Form C") on substantially the same terms as set out in this Agreement, with such amendments as the CRD may reasonably require;
  - (3) a discharge of this Agreement (the "Discharge") for execution by the CRD;
  - (4) undertakings from the solicitor or notary for the Outside Offeror (the "Legal Representative") on terms satisfactory to the CRD, including that:
    - (a) the Legal Representative will only register the Discharge if it is done concurrently with the registration of the New Form C;
    - (b) the Legal Representative will ensure that the New Form C is registered against the Affordable Unit in priority to all mortgages and other financial liens, charges and encumbrances, except for any charges in favour of the CRD;
    - (c) forthwith after registration of the New Form C, provide to the CRD copies of the Discharge and the New Form C with registration particulars endorsed thereon, and a copy of the State of Title Certificate for the Land confirming registration of the New Form C; and
  - (5) a copy of the vendor's statement of adjustments for the Affordable Unit certified to be true by the Legal Representative; and
- iv. upon request by the CRD, the Owner delivers to the CRD such further evidence as the CRD may reasonably require to confirm the purchase price of the Affordable Unit, and to confirm that the Outside Offeror has granted to the CRD an option to purchase and a right of first refusal to purchase the Affordable Unit.

#### **PART IV – GRANT OF OPTION**

7. The Owner hereby grants CRD an exclusive and irrevocable option to purchase the Property at the Option Purchase Price in accordance with Parts IV and V of this Agreement.
8. CRD may exercise the Option only if the Owner:
  - a. defaults in its obligations under the Housing Agreement; or

- b. acquired the Affordable Unit from a previous Owner for a price which was, as of the date of closing of that transaction, greater than the Maximum Price or if the Owner was not, as of that date, a Qualified Buyer;
  - c. delivers the RFR Notice; or
  - d. defaults in its obligations under any mortgage of the Affordable Unit.
9. CRD may exercise the Option by delivering notice of exercise of the Option to the Owner (the "Notice").
10. From and after the Notice Date, this Agreement and the Notice will together constitute a binding and enforceable contract between the Owner and CRD for the purchase and sale of the Affordable Unit in accordance with the terms and conditions of Part IV and V.

## **PART V – PURCHASE AND SALE**

11. **Purchase and Sale** Subject to the terms and conditions of this Part V and relying on the warranties and representations herein set out, the Owner agrees to sell and CRD agrees to purchase the Property on the Closing Date for the Option Purchase Price, and the Owner agrees that, at the request of CRD, it will transfer registered title to the Property to CRD or such other Person as CRD may designate.
12. **Option Purchase Price** Subject to adjustments as provided in this Agreement, the option to purchase price (the "Option Purchase Price") under the Option to Purchase shall be:
- a. 95% of the Maximum Price; or
  - b. if the Owner has granted a bona fide arm's length mortgage or mortgages of the Affordable Unit to an Approved Lender which, as at the Closing Date, secures in aggregate an amount which exceeds 95% of the Maximum Price, the amount owing under and required to discharge the mortgage or mortgages to the Approved Lender as at the Closing Date.
13. **Repair and Maintenance**. From and after the Notice Date to the Closing Date, the Owner will take good care of the Property, will carry out all necessary repairs, maintenance, and replacements, will take reasonable care to protect and safeguard the Property and will in all other respects deal with the Property so that the warranties and representations of the Owner set out in this Agreement remain true and correct.
14. **Insurance** From and after the Notice Date to the Closing Date, the Owner will ensure that all policies of insurance with respect to the Property remain in full force and effect.
15. **Representations** The Owner hereby represents and warrants to, and covenants and agrees with the CRD, to transfer the Property to the CRD on the condition that as at the Closing Date that:
- i. the Owner has not used the Affordable Unit or permitted any use of the Affordable Unit to store, manufacture, dispose of, emit, spill, leak, generate,

transport, produce, process, release, discharge, landfill, treat or remediate any Hazardous Substances, including anything the storage, manufacture, disposal, emission, discharge, treatment, generation, use, transport, remediation or release into the environment of which is now or at any time after the execution of this Agreement is prohibited, controlled, regulated or licensed under Environmental Laws;

- ii. the Owner has not caused or permitted the storage, manufacture, disposal, emission, spilling, leakage, treatment, generation, transportation, production, processing, release, discharge, landfilling, treatment or remediation of any Hazardous Substances in, on, under or from the Affordable Unit;
  - iii. the Owner has at all times used the Affordable Unit in compliance with all Environmental Laws;
  - iv. the Owner will indemnify and save harmless the Regional District, and its elected and appointed officials, officers, employees and agents, from and against any and all actions, causes of action, liabilities, demands, losses, damages, costs (including remediation costs and costs of compliance with any law, and legal fees and disbursements), expenses, fines and penalties, suffered or incurred by the CRD by reason of a breach of any representation or warranty, covenant or agreement of the Owner set forth in this Agreement. This obligation will survive the termination of this Agreement.
16. **Risk** The Property will be at the risk of the Owner up to the time the Transfer is submitted for registration at the LTO on the Closing Date and will be at the risk of CRD after the time the Transfer is submitted for registration at the LTO on the Closing Date.
17. **Damage** If, prior to the time the Transfer is submitted for registration at the LTO, any damage occurs to the Property or any of the assets comprising the Property, CRD, by notice to the Owner, may elect to postpone the Closing Date for a period of not more than 30 days and may also elect:
  - a. not to acquire the Property, in which case neither party will have any further obligation to the other under this Part V pertaining to that particular Notice; or
  - b. that the Owner assign to CRD the Owner's right to receive any and all insurance proceeds payable with respect to the damage, subject to any bona fide loss payee designation, in which case the Owner will execute and deliver to CRD an assignment satisfactory to CRD.
18. **Construction Warranties** From and after the Closing Date, the Owner will assign to CRD all the Owner's rights under all warranties, guarantees or contractual obligations against any contractor or supplier who was engaged in the construction, renovation, or repair of all or any part of the Property or any improvement to the Property. CRD's acceptance of this assignment will not represent a waiver by CRD of the Owner's covenants, agreements, representations and warranties set out in this Agreement.
19. **Owner's Covenants** The Owner will:

- a. take all proper actions and proceedings on its part to enable the Owner to transfer a good and marketable title of the Property to CRD or such Person as CRD may designate, free and clear of all encumbrances other than Permitted Encumbrances;
  - b. deliver vacant possession of the Property to CRD or such Person as CRD may designate on the Closing Date, subject to prior receipt of the Option Purchase Price by the Owner;
  - c. not, from and after the Notice Date to the Closing Date, sell, transfer, dispose of or remove from the Affordable Unit any Personal Property; and
  - d. both before and after the Closing Date do such other things as CRD may reasonably require for transferring to and vesting in CRD or such Person as CRD may designate title to the Affordable Unit as contemplated by this Part V.
20. **Documents** CRD will prepare the documents necessary to complete the Transaction which will be in a form and substance reasonably satisfactory to CRD and its lawyers.
21. **Adjustments and Credits** The Owner and CRD will adjust, as at the Closing Date, all usual adjustments for a property similar to the Property including taxes, utility rates and any moneys owing to the strata corporation formed in respect of the Project.
22. **Closing** The Owner and CRD will complete the Transaction on the Closing Date at the offices of CRD or its lawyers.
23. **Owner's Closing Documents** At the closing, the Owner will deliver to CRD the following duly executed documents:
- a. the Transfer;
  - b. a vendor's statement of adjustments;
  - c. if required, a bill of sale for the Personal Property and all other deeds, transfers, assignments, resolutions, consents, estoppels and other certificates and assurances as CRD may reasonably require;
  - d. a statutory declaration of the Owner that the Owner is a resident of Canada within the meaning of the Income Tax Act (Canada);
  - e. a certificate in confirmation that the sale of the Affordable Unit to CRD is exempt from taxes under the *Excise Tax Act* (the "GST") or, alternately, a certified cheque or bank draft payable to CRD in an amount equal to the GST payable by CRD on the Option Purchase Price; and
  - f. unless waived in writing by CRD, a certified cheque or bank draft payable to CRD in the amount, if any, by which the moneys owing under and required to discharge any mortgage or mortgages of the Affordable Unit exceed the Option Purchase Price as adjusted under Section 21.
24. **CRD's Closing Documents** At the closing, CRD will deliver to the Owner:

- a. a purchaser's statement of adjustments; and
  - b. a cheque for the Option Purchase Price, as adjusted under Section 21.
25. **Tabling** Except for the Transfer, all documents and cheques will be tabled at the closing. CRD will cause its lawyers, on the Closing Date, to conduct a pre-registration index search of the Affordable Unit at the LTO. If that search indicates that no liens, charges or encumbrances have been registered or filed in respect of the Affordable Unit except for Permitted Encumbrances and encumbrances which the lawyers for the Owner have undertaken to discharge, the lawyers for CRD or their agents shall submit the Transfer for registration and then conduct a post-filing registration index search. If that search indicates that no liens, charges or encumbrances have been registered or filed in respect of the Affordable Unit since the pre-filing registration index search, all documents and payments will be released to each of the Owner and CRD according to the entitlement of each of them.
26. **Reimbursement** If CRD waives payment on the Closing Date of the amount referred to in Section 23.f., the Owner shall pay such amount to CRD, on demand, with interest thereon at the rate of eighteen percent (18%) per annum, compounded monthly, from the Closing Date to the date of payment.
27. **Survival** All the representations, warranties, covenants and agreements of the Owner and CRD contained in this Agreement will survive the Closing Date, registration of documents, and the payment of the Option Purchase Price.

## **PART VI – INTERPRETATION**

28. **Time** Time will be of the essence of this Agreement. If any party expressly or impliedly waives this requirement, that party may reinstate it by delivering notice to the other party. If a time is specified in this Agreement for observing or performing any obligation, such time will be local time in Victoria, British Columbia.
29. **Governing Law** This Agreement will be governed by and construed and enforced in accordance with the laws of British Columbia and the laws of Canada applicable in British Columbia.
30. **References** In this Agreement, words importing the singular include the plural and vice versa, and words importing gender include all genders.
31. **Construction** The division of this Agreement into sections and the use of headings are for convenience of reference only and are not intended to govern, limit or aid in the interpretation of this Agreement. The wording of this Agreement will be construed simply, according to its fair meaning, and not strictly for or against any party.
32. **Validity of Provisions** If a Court of competent jurisdiction finds that any provision contained in this Agreement is invalid, illegal or unenforceable, such invalidity, illegality or unenforceability will not affect any other provision of this Agreement which will be construed as if such invalid, illegal or unenforceable provision had never existed and such other provisions will be enforceable to the fullest extent permitted at law.

33. **No Waiver** Failure by either party to exercise any of its rights, powers or remedies hereunder or its delay to do so, will not be interpreted as a waiver of those rights, powers or remedies except in the case of a written waiver. No waiver of a particular right will be deemed to be a waiver of that right in any other instance or a waiver of any other right.
34. **Statute.** Any reference to a statute and to any regulations under that statute means the statute and regulations as amended or replaced from time to time.
35. **Remedies** Any party to this Agreement, in addition to its rights under this Agreement or at law, will be entitled to all equitable remedies including specific performance, injunction and/or declaratory relief, to enforce its rights under this Agreement. No reference to or exercise of any specific right or remedy under this Agreement or at law or in equity by any party will prejudice or preclude that party from exercising any other such right or remedy. No such right or remedy will be exclusive or dependent upon any other such right or remedy, but any party, from time to time, may exercise any one or more of such rights or remedies independently, successively or in combination. The Owner acknowledges that specific performance, injunctive relief (mandatory or otherwise) or other equitable relief may be the only adequate remedy for a default by the Owner under this Agreement.

## **PART VII – MISCELLANEOUS**

36. **CRD Not Obligated to Exercise Right of First Refusal or Option** The Owner acknowledges and agrees that the CRD is under no obligation to exercise the rights granted under this Agreement.
37. **Duration of Option and Right of First Refusal** The option to purchase and right of first refusal hereby granted and the right of first refusal granted by this Agreement are effective until the date that is 80 years less a day after the date on which Form C referring to this Agreement is deposited for registration in the LTO, provided that if the perpetuity period for the Agreement as specified in the *Perpetuity Act* is increased or decreased in length than the term of this Agreement will be increased or decreased accordingly.
38. **Powers Unaffected** This Agreement does not:
  - a. affect or limit the discretion, rights, duties or powers of the CRD under any enactment or at common law, including in relation to the use or subdivision of the Land;
  - b. impose on the CRD any legal duty or obligation, including any duty of care or contractual or other legal duty or obligation, to enforce this Agreement;
  - c. affect or limit any enactment relating to the use or subdivision of the Land; or
  - d. relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Land.
39. **Agreement for Benefit of CRD Only** The Owner and the CRD agree that;
  - a. this agreement is entered into only for the benefit of the CRD;

- b. this agreement is not intended to protect the interests of the Owner, any tenant, or any future owner, lessee, occupier or user of the Property, the Land or the building or any portion thereof, including any Affordable Unit;
  - c. the CRD may at any time execute a release and discharge of this agreement, without liability to anyone for doing so, and without obtaining the consent of the Owner.
- 40. **No Public Law Duty** Where the CRD is required or permitted by this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination or give its consent, the Owner agrees that the CRD is under no public law duty of fairness or natural justice in that regard and agrees that the CRD may do any of those things in the same manner as if it were a private party and not a public body.
- 41. **Notices** Unless otherwise specified, each notice to the Owner must be given in writing and delivered personally or by courier to the Owner at its address shown on title to the Affordable Unit as registered in the LTO from time to time. Unless otherwise specified, each notice to CRD must be given in writing and delivered personally or by courier to CRD, Attention: Manager Real Estate Services, at the address shown on the General Instrument - Part 1 or to such other address or addresses or person or persons as CRD may designate. Notices will be deemed to have been received when delivered.
- 42. **Fees** Each of the Owner and CRD will pay its own legal fees.
- 43. **Costs** Unless otherwise specified in this Agreement, the Owner will comply with all the requirements of this Agreement at its own cost and expense and will pay to the CRD, on request, all reasonable costs or expenses it incurs in connection with this Agreement.
- 44. **Enuring Effect** This Agreement will enure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and permitted assigns as the case may be of the Owner and CRD.
- 45. **Further Assurance** Upon request by the CRD, the Owner will forthwith do such acts and execute such documents as may be reasonably necessary in the opinion of the CRD to give effect to this Agreement.
- 46. **Registration** This Agreement will be registered against title to the Lands initially and then shall be restricted to the titles to the Affordable Units upon filing of a strata plan of the Lands in the LTO subject only to Permitted Encumbrances.
- 47. **Discharge** On expiry of the Term, the Owner may require that CRD execute and deliver to the Owner a release in registrable form of the Covenant and the Option.
- 48. **Amendment** This Agreement may only be amended by written agreement of the parties.
- 49. **Counterparts** This Agreement and any amendment, supplement, restatement or termination of any provision of this Agreement may be executed and delivered in any number of counterparts, each of which, when executed and delivered is an original, but all of which taken together constitute one and the same instrument.

IN WITNESS WHEREOF the parties have duly executed this Agreement by signing the General Instrument - Part 1

**SCHEDULE "A"**  
**PERMITTED ENCUMBRANCES**

Legal Notations:

[Insert legal notations if any]

Charges, Liens and Interests:

[Insert if any]