

DISTRICT OF SEHELDT

CSA Developments Housing Agreement Bylaw No. 503, 2011

A bylaw to enter into a Housing Agreement under section 905 of the *Local Government Act*

WHEREAS

- A. The owner of the lands wishes to rezone and develop lands in the District of Sechelt and in connection with that development has agreed to contributions for affordable housing which lands are legally described as follows:

Lot 1 Block 9 District Lot 303 & 304, Plan EPP 12476

- B. The District wishes to enter into a housing agreement in order to secure one (1) Affordable Housing Unit.

NOW THEREFORE the Council of the District of Sechelt, in open meeting assembled, enacts as follows:

1. TITLE

This Bylaw may be cited for all purposes as “CSA Developments Housing Agreement Bylaw No. 503, 2011”.

2. PROVISIONS

- (a) By this Bylaw, Council authorizes the District to enter into a housing agreement with CSA Developments in respect to land legally described as:

Lot 1 Block 9 District Lot 303 & 304, Plan EPP 12476

in the form of the Section 219 Covenant and Housing Agreement including an Option to Purchase and Right of First Refusal agreement attached as Schedule “1” to this Bylaw.


- (b) The Mayor and the Corporate Officer of the District are authorized to execute the Housing Agreement.

READ A FIRST TIME THIS 6th DAY OF July, 2011

READ A SECOND TIME THIS 6th DAY OF July, 2011

READ A THIRD TIME THIS 6th DAY OF July, 2011

ADOPTED THIS 20th DAY OF July, 2011



Mayor



Corporate Officer

I certify this to be a true and accurate copy of
"District of Sechelt CSA Developments Housing
Agreement Bylaw No. 503, 2011".

Corporate Officer

Schedule 1

Housing Agreement including Option to Purchase and Right of First Refusal

TERMS OF INSTRUMENT – PART 2

SECTION 219 COVENANT AND HOUSING AGREEMENT

THIS AGREEMENT dated for reference _____, is

BETWEEN:

(the "Owner")

AND:

DISTRICT OF SECHELT, PO Box 129, Sechelt, BC, V0N 3A0

(the "District")

GIVEN THAT:

- A. The Owner is the registered owner in fee simple of the Land, as hereinafter defined;
- B. The Owner has applied to the District for a Zoning Bylaw Amendment for a development with 24 residential units and 6 commercial units.
- C. The Owner and the District wish to enter into this agreement to secure provision of one (1) Affordable Housing Units with restrictions regarding design, level of finishing, use, occupancy, resale prices and rents.
- D. The Owner and the District agree that the terms and conditions of this agreement will have effect as both a covenant under section 219 of the *Land Title Act* and a housing agreement under section 905 of the *Local Government Act*;

THIS AGREEMENT is evidence that in consideration of \$1.00 and other good and valuable consideration paid by the District to the Owner (the receipt of which the Owner acknowledges), the Owner covenants and agrees with the District, in accordance with section 905 of the *Local Government Act* and section 219 of the *Land Title Act*, as follows:

Definitions

1. In this agreement the following terms have the following meanings:

- (a) “Affordable Housing Unit” means a one-bedroom apartments to be constructed on the Land as part of the Development that are subject to the sale price and occupancy restrictions set out in this agreement, which units are shown and specified on Schedules C and D, and Affordable Housing Unit means any of them.
- (b) “Consumer Price Index” means the All-items Consumer Price Index for Vancouver, as compiled and published by Statistics Canada or its successor.
- (c) “Discharge Fee” means the difference between Maximum Price and Market Value of the Affordable Housing Units. The fee will be paid to the District of Sechelt and added to the municipal affordable housing fund.
- (d) “Family” means persons residing with a Qualified Occupant in a single domestic unit and related by blood, marriage, adoption, common law marriage or foster parenthood, or cohabitating with them in an opposite sex or same sex spousal relationship.
- (e) “Housing Criteria” means a scoring system as defined in Schedule F.
- (f) “Land” means the land described in Item 2 of the *Land Title Act* Form C to which this agreement is attached, and any part into which that land is Subdivided.
- (g) “LTO” means the Lower Mainland Land Title Office or its successor.
- (h) “Market Value” means the highest value of either the actual sale price of an Affordable Housing Unit or the fair market value as determined by a real estate appraiser. The District may require the Owner to pay for an independent appraisal to establish Market Value.
- (i) “Maximum Price” means an amount equal to \$200,000.00 (including GST), which amount shall automatically increase on the first anniversary of the day on which the Occupancy Permit was issued by the District for the applicable Affordable Housing Unit, and thereafter on each successive anniversary date, by a percentage equal to 1% plus the percentage increase (if any) in the CPI since the date of such Occupancy Permit issuance or the last anniversary date, as the case may be.
- (j) “Maximum Rent” means an amount per month equal to \$1,000 which amount shall automatically increase beginning on the first anniversary of the day on which the Occupancy Permit was issued by the District for the applicable Affordable Housing Unit, and thereafter on each successive anniversary date, by the same percentage as the percentage increase (if any) in the CPI since the date of Occupancy Permit issuance or the last anniversary date, as the case may be.

- (k) “Market Units” means the residential dwelling units to be constructed on the Land as part of the Development that are not Affordable Housing Units as shown on Schedule B.
- (l) “Occupancy Permit” means a permit under the applicable bylaw of the District in force from time to time permitting persons to occupy a building or structure or portion thereof.
- (m) “Option/RFR” means the option to purchase and right of first refusal to be granted by the Owner to the District in respect of each Affordable Housing Unit in the form attached as Schedule G.
- (n) “Owner” means the Transferor described in the *Land Title Act* Form C to which this agreement is attached, 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 from time to time of a lot, strata lot or parcel containing an Affordable Housing Unit.
- (o) “Parcel” means a lot, block or other area in which land is held or into which land is subdivided and, includes, a strata lot under the *Strata Property Act* (British Columbia).
- (p) “Qualified Occupant” means a household who meets the Housing Criteria as applied by the Qualifying Body, who wishes to occupy an Affordable Housing Unit.
- (q) “Qualifying Body” means the District or other body or entity designated by the District for the purpose of reviewing and approving whether an individual is a Qualified Occupant as defined by the Housing Criteria prior to occupying an Affordable Housing Unit.
- (r) “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*.
- (s) “Tenancy Agreement” means a tenancy agreement, lease, license or other agreement granting rights to occupy an Affordable Housing Unit.
- (t) “Tenant” means an occupant of an Affordable Housing Unit.

Use of Land and Construction of Affordable Housing Units

2. The Land shall not be Subdivided, except by registration in the LTO of a strata plan under the *Strata Property Act* in substantially the same form as the plan attached as Schedule A.

3. The Land shall not be developed, and no building or structure shall be constructed on the Land, unless as part of the development of the Land the Owner also constructs the Affordable Housing Unit on the Land to at least the same standard and quality of construction and finishing as for the Market Units. In addition, the Affordable Housing Unit will be completed including all the features outlined in Schedule B. Location of the unit will be in accordance with the designated unit as outlined in Schedule C and the elevations outlined in Schedule D.
4. No building or structure on the Land may be occupied or used for any purpose until and unless:
 - (a) the Land is Subdivided in the manner permitted by sections 2 and 3;
 - (b) the District has issued Occupancy Permits for the Affordable Housing Unit designed and constructed in accordance with section 3; and
 - (c) the Owner has granted to the District the Option/RFR and registered the Option/RFR against title to the Affordable Housing Unit in the LTO, in priority to all financial liens, charges, encumbrances and legal notations (including, options to purchase, rights of first refusal and leases).

Partial Discharge market units

5. If the Owner has satisfied the requirements of paragraphs (a), (b) and (c) of section 4 and is not (at the time of the request referenced further in this paragraph) in breach of any of its obligations under this agreement, the District shall, at the request of the Owner and at the Owner's sole expense, execute and deliver to the Owner discharges of this agreement in registrable form, discharging this agreement from title to each Parcel (including strata lots) that does not contain an Affordable Housing Unit.

Discharge option Affordable Housing Units

6. The Owner may request discharge of this agreement at time of the second sale or any subsequent sale. The District will grant such discharge provided that the Owner pays the Discharge Fee at time of transfer of ownership of the unit. The Owner shall be responsible for preparing and registering such discharge in the LTO.

Use and Occupancy of Affordable Housing Units and Affordable Housing Parcels

7. Each Affordable Housing Unit:
 - (a) shall only be used as a permanent residence;
 - (b) shall be occupied as a permanent residence by at least one Qualified Occupant; and
 - (c) shall only be occupied by a Qualified Occupant who has been approved as a Qualified Occupant by the Qualifying Body, except that the Family of such

Qualified Occupant who occupies the Affordable Housing Unit as a permanent residence may also occupy the Affordable Housing Unit.

8. Within ten days after receiving notice from the District, the Owner shall in respect of each Affordable Housing Unit or Affordable Housing Parcel, deliver, or cause to be delivered, to the District a statutory declaration, in the form attached as Schedule B or such other form as may be determined from time to time by the District, sworn by the Owner, or a director or officer of the Owner, containing all of the information required to complete the statutory declaration. The District may request such a statutory declaration in respect of an Affordable Housing Unit or Affordable Housing Parcel no more than four times in any calendar year. The Owner hereby irrevocably authorizes the District to make such inquiries as it considers necessary and reasonable in order to confirm that the Owner is complying with this agreement, and irrevocably authorizes and directs the recipient of the request for information from the District to provide such information to the District.

Sale and Rental Restrictions on Affordable Housing Units

9. The Owner shall not sell or otherwise dispose of its Interest in an Affordable Housing Unit except in accordance with the terms and conditions of this agreement.
10. The Owner shall not accept any offer to purchase its Interest in an Affordable Housing Unit, nor sell or otherwise dispose of its interest in an Affordable Housing Unit, except to a Qualified Occupant or to a not-for-profit organization (approved in advance by the Qualifying Body) that rents out the Affordable Housing Unit to a Qualified Occupant for a rent not more than the Maximum Rent.
11. The Owner shall not accept any offer to purchase its Interest in an Affordable Housing Unit, nor sell or otherwise dispose of its interest in an Affordable Housing Unit, for a purchase price exceeding the Maximum Price.
12. The Owner shall give prior written notice of this agreement to any person to whom it proposes to sell or otherwise dispose (as that term is defined in the *Interpretation Act* (British Columbia)) of its Interest in an Affordable Housing Unit.
13. The Owner shall not rent or lease any Affordable Housing Unit unless the Owner is a not-for-profit organization approved under section 12 and then only to a Qualified Occupant in accordance with section 9 and the following additional conditions:
 - (a) the Affordable Housing Unit shall be used or occupied only pursuant to a Tenancy Agreement;
 - (b) the term of the Tenancy Agreement shall not exceed 1 year;
 - (c) the monthly rent payable for the Affordable Housing Unit shall not exceed the Maximum Rent, except that the Owner may, subject to the provisions of the *Residential Tenancy Act* (British Columbia), increase the rent payable for the

Affordable Housing Unit annually, beginning with the first anniversary of the day on which the Occupancy Permit was issued by the District for the Affordable Housing Unit, and thereafter on each successive anniversary date, by an amount determined by multiplying the rent payable for the Affordable Housing Unit at the time of the proposed rent increase by the percentage change in the CPI since the last anniversary date;

- (d) the Owner shall not require the Tenant to pay any extra charges or fees for use of any common property, limited common property, or other common area, or for sanitary sewer, storm sewer, water utilities, property taxes and similar services.
 - (e) the Owner shall attach a copy of this agreement to the Tenancy Agreement;
 - (f) the Owner shall include in the Tenancy Agreement a clause requiring the Tenant to comply with the use and occupancy restrictions contained in section 7 of this agreement;
 - (g) the Owner shall include in the Tenancy Agreement a clause entitling the Owner to terminate the Tenancy Agreement in accordance with the *Residential Tenancy Act* (British Columbia) if the Tenant uses or occupies, or allows use or occupation of, the Affordable Housing Unit in breach of any of the use and occupancy restrictions contained in this agreement;
 - (h) the Tenancy Agreement shall provide that the Tenant shall not sublease the Affordable Housing Unit or assign the Tenancy Agreement, without the consent of the Owner; and
 - (i) the Owner shall deliver a copy of the Tenancy Agreement to the District upon demand from time to time.
14. The Owner shall not permit the Interest in an Affordable Housing Unit to be subleased or a Tenancy Agreement to be assigned, unless such subletting or assignment is done in compliance with this agreement.
15. The Owner shall terminate a Tenancy Agreement if the Tenant uses or occupies, or allows use or occupation of an Affordable Housing Unit, in breach of this agreement, such termination to be in accordance with the terms of the Tenancy Agreement and the *Residential Tenancy Act* (British Columbia).
16. The Owner acknowledges and agrees that the District and the Qualifying Body are not responsible for, and make no representation to the Owner regarding, the suitability of any prospective tenant, notwithstanding the approval by the Qualifying Body of the tenant as a Qualified Occupant.
17. The District may, in its sole discretion, provide written consent to the Owner from time to time to do something that is otherwise not permitted under this agreement, on such terms and conditions as the District considers desirable.

Marketing Obligations and Lack of Offers for Affordable Housing Units and Affordable Housing Parcels

18. The Owner shall cooperate with the Qualifying Body in endeavouring to find purchasers for the Affordable Housing Units and Affordable Housing Parcels. The Owner shall adopt the same promotional materials and make the same marketing and sales efforts for the Affordable Housing Unit as for the Market Units.
19. The Qualifying Body will initiate the selection process for the first sale, 4 months before the expected issuance of Occupancy Permit for the Affordable Housing Unit. The Qualifying Body will use a point system similar to the sample Schedule F. A list of eligible candidates in priority order will be provided to the Owner, at least 2 months before expected issuance of Occupancy Permit. The Owner will offer the Affordable Housing Unit only to eligible candidates in priority order.
20. Provided the Owner has complied with its obligations under sections 18 and 19, if, after 150 days after the issuance by the District of an Occupancy Permit for an Affordable Housing Unit, the Owner has not received an offer to purchase an Affordable Housing Unit for the Maximum Sale Price, the Owner may at any time within the 60 day period following that 150 day period give notice to the District of the lack of any offer, together with a statutory declaration sworn by the Owner, or a director or officer of the Owner, that the Owner has complied with its obligations under section 18 and 19 and has received no such offer. If following delivery of such notice, the District does not exercise its option under the Option/RFR in accordance therewith within the time provided thereunder, the District shall execute a discharge of this agreement from title to the applicable Affordable Housing Unit provided that the Owner has first paid the Discharge Fee with respect to such discharge to the District for use by the District for affordable housing purposes. The Owner shall be responsible for preparing and registering such discharge in the LTO. For clarity, the aforementioned payment is payable with respect to each Affordable Housing Unit discharge under this section

Specific Performance

21. The Owner agrees that because of the public interest in ensuring that all of the matters described in this agreement are complied with, the public interest strongly favours the award of a prohibitory or mandatory injunction, or an order for specific performance or other specific relief, by the Supreme Court of British Columbia at the instance of the District, in the event of an actual or threatened breach of this agreement.

Notice of Housing Agreement

22. For clarity, the Owner acknowledges and agrees that:
 - (a) this Agreement constitutes both a covenant under section 219 of the *Land Title Act* and a housing agreement entered into under section 905 of the *Local Government Act*;

- (b) the District is required to file a notice of housing agreement in the LTO against title to the Land; and
- (c) once such a notice is filed, this agreement binds all persons who acquire an interest in the Land as a housing agreement under section 905 of the *Local Government Act*.

No Obligation to Enforce

23. The rights given to the District by this agreement are permissive only and nothing in this agreement imposes any legal duty of any kind on the District to any one, or obliges the District to enforce this agreement, to perform any act or to incur any expense in respect of this agreement

No Effect On Laws or Powers

24. This agreement does not:
- (a) affect or limit the discretion, rights, duties or powers of the District or the approving officer for the District under the common law or any statute, bylaw or other enactment nor does this agreement date or give rise to, nor do the parties intend this agreement to create, any implied obligations concerning such discretionary rights, duties or powers;
 - (b) affect or limit the common law or any statute, bylaw or other enactment applying to the Land; or
 - (c) relieve the owner from complying with any common law or any statute, regulation, bylaw or other enactment.

Indemnity

25. The Owner hereby releases the District, and indemnifies and saves the District harmless, from and against any and all actions, causes of actions, suits, claims (including claims for injurious affection), costs (including legal fees and disbursements), expenses, debts, demands, losses (including economic loss) and liabilities of whatsoever kind arising out of or in any way due or relating to the granting or existence of this agreement, the restrictions or obligations contained in this agreement or the performance or non-performance by the Owner of this agreement that the District is or may become liable for, incur or suffer.

Priority

26. The Owner shall do everything necessary, at the Owner's expense, to ensure that this agreement shall be registered against title to the Land in priority to all liens, charges and encumbrances registered or pending registration against title to the Land, save and except those specifically approved in writing by the District or in favour of the District.

Waiver

27. An alleged waiver of any breach of this agreement is effective only if it is an express waiver in writing of the breach. A waiver of a breach of this agreement does not operate as a waiver of any other breach of this agreement.

Interpretation

28. In this agreement:
- (a) reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;
 - (b) reference to a particular numbered section or article, or to a particular lettered Schedule, is a reference to the correspondingly numbered or lettered article, section or Schedule of this agreement;
 - (c) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this agreement.
 - (d) the word "enactment" has the meaning given to it in the *Interpretation Act* (British Columbia) on the reference date of this agreement;
 - (e) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided;
 - (f) reference to a "party" or the "parties" is a reference to a party, or the parties, to this agreement and their respective successors, assigns, trustees, administrators and receivers;
 - (g) time is of the essence; and
 - (h) reference to a "day", "month" or "year" is a reference to a calendar day, calendar month, or calendar year unless otherwise expressly provided.

Further Acts

29. The Owner shall do everything reasonably necessary to give effect to the intent of this agreement, including execution of further instruments.

Severance

30. If any part of this agreement is held to be invalid, illegal or unenforceable by a court having the jurisdiction to do so, that part is to be considered to have been severed from the rest of this agreement and the rest of this agreement remains in force unaffected by that holding or by the severance of that part.

No Other Agreements

31. This agreement is the entire agreement between the parties regarding its subject and it terminates and supersedes all other agreements and arrangements regarding its subject.

Enurement

32. This agreement binds the parties to it and their respective successors, heirs, executors and administrators.

Deed and Contract

33. By executing and delivering this agreement each of the parties intends to create both a contract and a deed executed and delivered under seal.

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

Schedule B

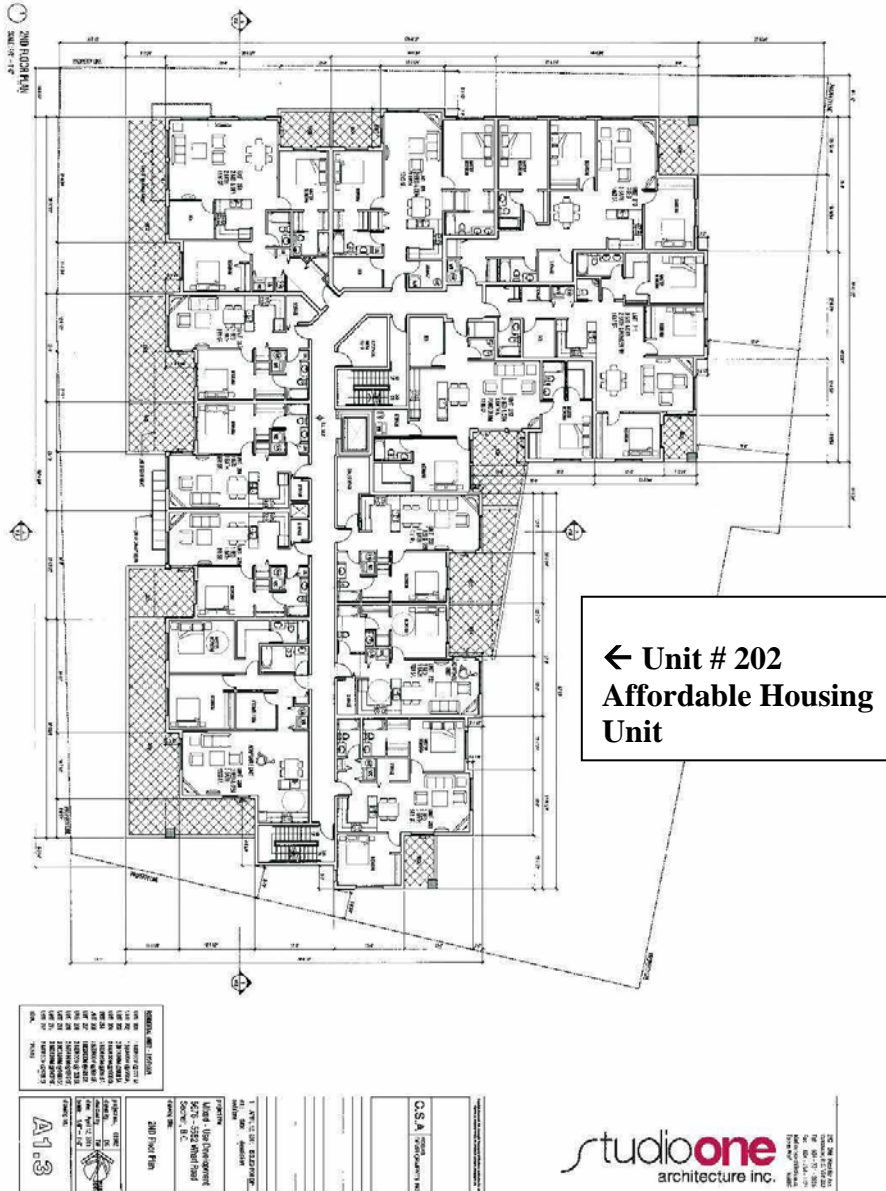
Included features and finishing of the Affordable Unit

Further to section 3 of this agreement the Affordable Housing Unit will include the following features:

- 9 ft ceilings
- Stamped concrete surfaced patio
- Carpet in bedroom
- Engineered hardwood floors in living and dining area
- Tiles in hallway, kitchen and bathroom
- Stainless steel appliances including fridge, dishwasher, microwave, oven with stovetop
- Granite counter top with under mounted sink
- Provision of washer and dryer
- Gas fireplace
- Adaptable housing design features

Schedule C

Location of the Affordable Housing Unit



Schedule D

Elevation for the development, including the Affordable Housing Unit



Schedule E

Statutory Declaration

CANADA
PROVINCE OF BRITISH COLUMBIA
IN THE MATTER OF A HOUSING AGREEMENT WITH
THE DISTRICT OF SECHELT (“Housing Agreement”)

TO WIT:

I, _____ of _____, British Columbia, do solemnly declare that:

1. I am the owner of _____ (the “Affordable Housing Unit”), and make this declaration to the best of my personal knowledge.
2. This declaration is made pursuant to the Housing Agreement in respect of the Affordable Housing Unit.
3. For the period from _____ to _____ the Affordable Housing Unit was occupied only by the Qualified Occupants (as defined in the Housing Agreement) whose names and current addresses and whose employer’s names and current address appear below:

Name, addresses and phone numbers of Qualified Occupants:

4. If, under 3 above, I am not shown as an occupant of the Affordable Housing Unit, the rent charged each month for the Affordable Housing Unit is as follows:
 - a. the monthly rent on the date 365 days before this date of this statutory declaration: \$ _____ per month;
 - b. the rent on the date of this statutory declaration: \$ _____; and
 - c. the proposed or actual rent that shall be payable on the date that is 90 days after the date of this statutory declaration: \$ _____.
5. I confirm that the I have complied with all of the obligations of the Owner (as defined in the Housing Agreement) under the Housing Agreement.
6. I make this solemn declaration, conscientiously believing it to be true and knowing that it is of the same force and effect as if make under oath and pursuant to the *Evidence Act* (British Columbia).

DECLARED BEFORE ME at the _____,)
 British Columbia, this ____ day of _____)
 _____)
 _____)
 A Commissioner for taking Affidavits for British Columbia)

Schedule F – Housing Criteria

	Criterion	Scoring	Applicant's score
A	Gross Household Income	Up to \$ 20,000/yr – 20 points \$ 20,001 - \$ 30,000/yr – 15 points \$ 30,001 - \$ 40,000/yr – 10 points \$ 40,001 - \$ 50,000/yr – 5 points	/20
B	Sunshine Coast / residency workforce	10 points for applicants currently residing on the Sunshine Coast 10 points for applicants currently working on the Sunshine Coast	/20
C	Limitations in current quarters in living	Children 5 or over must share a bedroom – 5 points More than 2 in 1 bedroom – 5 points More than 3 in 1 bedroom – 10 points Two households are living together in a single family accommodation - 10 points	/25
D	Household members with special needs	20 points assigned for each family member which needs support services as a result of homelessness, mental illness, addictions, developmental disabilities, youth leaving foster care (applicable for supportive housing units)	/20
E	Senior household members with support needs	20 points assigned for each family member 65 of age or older which needs limited support to maintain independent living (applicable for supportive housing units)	/20
F	First time home owner	20 points assigned for households that have not owned a house before.	/20
G	Number of Children	5 points for each child to a maximum of 20 points	/20

Schedule G – Option to Purchase and Right of First Refusal

TERMS OF INSTRUMENT - PART 2

OPTION TO PURCHASE & RIGHT OF FIRST REFUSAL

THIS AGREEMENT dated for reference _____ is

BETWEEN:

DISTRICT OF SECHELT, PO Box 129, Sechelt, BC, V0N 3A0

(the "District")

AND:

.....

(the "Owner")

GIVEN THAT:

- A. The Owner is the owner of the land, and all improvements thereto, (the "Land") legally described in section 2 of page 1 of the *Land Title Act* Form C to which this agreement is attached,
- B. The Owner has entered into a housing agreement with the District under section 905 of the *Local Government Act* and has granted to the District a covenant under section 219 of the *Land Title Act*, relating to certain restrictions regarding the use, occupancy and disposition of the land (collectively, the "Housing Agreement");
- C. In order to ensure that the Land is occupied and disposed of in accordance with the Housing Agreement, the Owner wishes to grant to the District a right of first refusal and an option to purchase the Land on the following terms and conditions,

THIS AGREEMENT is evidence that in consideration of the payment of \$1.00 paid by the District to the Owner and other good and valuable consideration (the receipt and sufficiency of which the Owner acknowledges), the Owner and the District agree as follows:

right of first refusal

1. **Definitions** – In addition to any terms defined elsewhere in this agreement, in this agreement the following terms have the following meanings:

- (a) "Arm's-length" has the same meaning as that term has in the *Income Tax Act* (Canada);
- (b) "Bona Fide Offer" means an offer to purchase the Land;

- (i) in writing,
 - (ii) signed by an Outside Offeror,
 - (iii) only in its entirety and chattels pertaining thereto and no other property, rights or assets,
 - (iv) free and clear of any liens, charges and encumbrances other than the Permitted Encumbrances (as defined in section 3.1),
 - (v) in a form legally enforceable against the Outside Offeror and subject to no conditions other than that the District waive its rights under this right of first refusal,
 - (vi) providing for a deposit of not less than 10% of the proposed purchase price after removal of all conditions,
 - (vii) providing that if the District does not exercise its right to purchase the Land under section 6, or the Option under Article 2, the Outside Offeror will grant to the District an option to purchase and right of first refusal to purchase the Land upon the same terms and conditions as are set forth in this agreement;
- (c) "Business Day" means Monday to Friday inclusive except for those days declared by lawful authority as holidays, excluding any day that the land title office is not open for business;
- (d) "Expiry Time" with respect to any offer made by the Owner to the District under section 4, will be 4:30 p.m. on the twenty-eighth calendar day after the receipt by the District of the notice and other documents required to be provided under section 1.3, provided that in determining such time the day such offer is received by the District will be excluded; and
- (e) "Outside Offeror" means a purchaser or prospective purchaser who deals at Arm's-length with the Owner.

2. **Restrictions on Sale** – The Owner will not sell, transfer or otherwise convey or offer to sell, transfer or otherwise convey the Land except:

- (a) for consideration payable entirely in lawful money of Canada;
- (b) to an Outside Offeror;
- (c) pursuant to a Bona Fide Offer; and
- (d) in accordance with, and to the extent permitted by, the terms of this agreement.

3. **Notice of Bona Fide Offer** – If, at any time and from time to time during the Term, the Owner receives a Bona Fide Offer from an Outside Offeror, which Bona Fide Offer the Owner is

willing to accept, then the Owner will deliver written notice (the "Notice") to the District that the Owner has received such Bona Fide Offer, and will deliver to the District with the Notice a photocopy of such Bona Fide Offer, certified by the Owner to be a true copy.

4. **Notice as Offer** – The Notice will be deemed to constitute an offer by the Owner to the District to sell the Land to the District on and subject to all the terms and conditions set forth in such Bona Fide Offer.

5. **Offer Irrevocable** – The offer made by the Owner to the District under section 4 will be irrevocable and may not be withdrawn by the Owner until after the Expiry Time.

6. **Acceptance of Offer** – Upon receipt of the Notice, the District will have the exclusive first right, exercisable up to and including but not after the Expiry Time, to deliver to the Owner written notice (the "Acceptance") that the District will purchase the Land for the price and upon the terms and conditions set forth in such Bona Fide Offer.

7. **Contract of Sale and Purchase** – Upon receipt by the Owner of the Acceptance, a binding contract of purchase and sale for the Land will be constituted between the District and the Owner, which contract will be completed in the manner provided in such Bona Fide Offer as if the District were the Outside Offeror.

8. **Sale to Outside Offeror** – If the Owner does not receive the Acceptance before the Expiry Time and the District does not exercise the Option under Article 2 within the time provided therein, the District will waive its rights under this right of first refusal, but only if the Owner complies with the following requirements:

- (a) At least 7 days before completion of the sale pursuant to the Bona Fide Offer, the owner delivers to the District the following:
 - (i) written proof, satisfactory to the District, in its sole discretion, that the purchase price payable under the Bona Fide Offer is in compliance with the Housing Agreement;
 - (ii) a signed Form C granting to the District an option to purchase and a right of first refusal to purchase the Land on the same terms as set out in this agreement (the "New Form C");
 - (iii) a discharge of this agreement for execution by the District (the "Discharge");
 - (iv) undertakings from the solicitor or notary for the Outside Offeror on terms satisfactory to the District, including to:
 - (A) register the Discharge only concurrently with the registration of the New Form C and in priority to all mortgages and other financial liens, charges and encumbrances, except for any charges in favour of the District; and
 - (B) promptly following registration of the New Form C, provide to the District a copy of the Discharge and New Form C bearing registration particulars

along with a copy of the vendor's statement of adjustments with respect to the transaction certified to be a true copy thereof by the lawyer or notary.

If the sale to the Outside Offeror is not so completed, then any subsequent sale to any person or corporation may be made only if all the requirements of this agreement are again complied with, and the option to purchase and right of first refusal under this agreement will survive and continue in full force and effect.

option to purchase

1. **Grant of Option** – In consideration of the payment of the \$1.00 by the District to the Owner (the receipt and sufficiency of which the Owner acknowledges), the Owner grants to the District the sole, exclusive and irrevocable option to purchase the Land free and clear of all liens, claims, charges, encumbrances and legal notations, except for the Permitted Encumbrances, (the “Option”).
2. **Exercise of Option** – The District may exercise the Option at any time during the Term by delivering notice of the exercise of the Option to the Owner.
3. **Restrictions on Exercise of Option** – Notwithstanding section 2, the District may not exercise the Option except if the Owner breaches any of its obligations under the Housing Agreement or unless the Owner has given notice to the District pursuant to section 20 of the Housing Agreement.
4. **Binding Agreement** - If the District exercises the Option under section 2, this agreement will become a binding agreement for the purchase and sale of the Land for the Purchase Price, which shall be completed upon the terms and conditions contained in this Article on the date that is 28 days after the date the notice of Option exercise is delivered (the “Completion Date”).
5. **Purchase Price** – If the District exercises the Option, the purchase price (the “Purchase Price”), excluding GST, for the Land shall be equal to lesser of (i) the purchase price set out in the Bona Fide Offer (if any) and (ii) the “Maximum Price” as that term is defined and determined in accordance with the Housing Agreement.
6. **Risk** – The Land will be at the risk of the Owner until completion of the transfer of the Land to the District and after completion it will be at the District's risk.
7. **Adjustments** – All adjustments to the Purchase Price in respect of the Land, both incoming and outgoing, usually the subject of adjustment between a vendor and purchaser in connection with the purchase and sale of land, including adjustments of property taxes, utilities and rents, must be made up to and including the Completion Date.
8. **Title and Possession** – On the Completion Date, the Owner will:
 - (a) transfer and convey the estate in fee simple of the Land to the District free and clear of all liens, charges, encumbrances and legal notations except for the Permitted Encumbrances; and

- (b) give vacant possession of the Land to the District, subject only to the Permitted Encumbrances.

9. **Closing Documents** - On or before the Completion Date, the Owner must cause its solicitors to deliver to the District's solicitors the following items, in a form and content satisfactory to the District, acting reasonably, duly executed by the Owner and all other parties thereto and in registrable form wherever appropriate:

- (a) a freehold transfer conveying title to the Land to the District, subject only to the Permitted Encumbrances ("Transfer");
- (b) the Owner's statement of adjustments;
- (c) the District's statement of adjustments;
- (d) a statutory declaration sworn by the Owner certifying that the Owner is a resident of Canada within the meaning under the *Income Tax Act* (Canada);
- (e) such further deeds, acts, things, certificates and assurances as may be requisite in the reasonable opinion of the District's solicitors, for more perfectly and absolutely assigning, transferring, conveying and assuring to the District title to the Land free and clear of all liens, claims, charges, encumbrances and legal notations, other than the Permitted Encumbrances and to assign to the District the benefit of any of the Permitted Encumbrances.

10. **Delivery of Documents** – On or before the Completion Date, the District must deliver to the Owner's solicitors, the District's statement of adjustments.

11. **Preparation of Documents** – The documents contemplated in section 2.9 will be prepared by the District's solicitors, to the extent of preparation is required, and delivered to the Owner's solicitors at least 3 days before the Completion Date.

12. **Payment in Trust** – On or before the Completion Date, the District must pay the adjusted Purchase Price to the District's solicitors and the Owner hereby irrevocably directs the District to cause the District's solicitors to pay the adjusted Purchase Price to the Owner's solicitors and this direction shall constitute good and sufficient authority for doing so.

13. **Registration** – Forthwith following the payment in section 12 and after receipt by the District's solicitors of the documents and items referred to in section 2.9, the District must cause the District's solicitors to deposit the Transfer in the applicable Land Title Office (the "LTO").

14. **Payment** – Promptly following the deposit referred to in section 13 and upon the District's solicitors being satisfied that a search of the property index maintained by the LTO discloses there are no transfers, liens, charges, encumbrances or legal notations, other than the following:

- (a) the existing title number to the Land;

- (b) Permitted Encumbrances; and
- (c) the Transfer;

the District must cause the District's solicitors to deliver to the Owner's solicitors a trust cheque for the adjusted Purchase Price made payable to the Owner's solicitors, in trust.

15. **Concurrent Requirements** – It is a condition of this agreement that all of the requirements of sections 13 and 14 are concurrent requirements and it is agreed that nothing will be completed on the Completion Date until everything required to be paid, executed and delivered on the Completion Date has been so paid, executed and delivered and until the District's solicitors have satisfied themselves as to the registration and priority of the Transfer.

16. **Fees and taxes** – The District must pay, as and when due and payable:

- (a) any property transfer tax payable under the *Property Transfer Tax Act* (British Columbia);
- (b) LTO registration fees in connection with the registration of the Transfer;
- (c) its own legal fees and disbursements; and
- (d) any GST payable under the *Excise Tax Act* (Canada) in respect of the Transfer and conveyance of the Land to the District, with the District and the Owner agreeing that the Purchase Price does not include GST,

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

17. **Currency and Payment Obligations** – All dollar amounts referred to in this agreement are Canadian dollars.

18. **Preparation of Documents and Clearing Title** – The District must prepare all necessary conveyancing documentation. At its expense, the Owner must clear title to the Land, subject only to the Permitted Encumbrances.

miscellaneous

1. **Permitted Encumbrances** – In this agreement, "Permitted Encumbrances" means the exceptions and reservations contained in the original Crown grant, any non-financial charges and encumbrances in favour of any government entity or public utility.

2. **Access** – The District, its agents and employees have the licence, exercisable on 24 hours prior written notice to the Owner, to enter upon the Land from time to time during the Term, at the District's sole risk and expense, for the purpose of making inspections, surveys, tests and studies of the Land. The District agrees to:

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- (a) release and indemnify, and hold harmless, the Owner from and against any and all actions, causes of actions, liability, demands, losses, costs and expenses (including legal fees, costs and disbursements) which the Owner or any third party may suffer, incur, be subject to or liable for, arising out of or in any way related to or in connection with the exercise by the District of its rights under this section; and
 - (b) leave the Land in the same condition as that in which the District found the Land, including by removing any equipment, refuse or other matter brought on to the Land by the District or its agents or contractors.

3. **Further Assurances** - Each of the parties must at all time 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, including to register this agreement with the LTO in priority to all liens, charges and encumbrances, except for the Permitted Encumbrances, promptly after execution by the parties.

4. **Notice** - Any notice, direction, demand, approval, certificate or waiver (any of which constitute a "Notice") which may be or is required to be given under this agreement must be in writing and be delivered or sent by facsimile transmission:

5797 Cowrie Street, Sechelt, B.C. V0N 3A0

Fax: (604) 885-7591

Attention: Director of Corporate Services

to the Owner: to the address set out in the records of the LTO.

Any Notice that is delivered is to be considered given on the day it is delivered and any notice, direction, demand, approval, certificate or waiver that is sent by fax is to be considered given on the day it is sent except that if, in either case, that day is not a business day, it is to be considered given on the next business day after it is sent.

5. **No Effect on Powers** – This agreement does not:

- (a) affect or limit the discretion, rights, duties or powers of the District or the approving officer for the District under the common law or any statute, bylaw or other enactment, nor does this agreement create, or is the parties' intention to create, any implied obligations regarding such discretion, rights, duties or powers;
- (b) affect or limit the common law or any statute, bylaw or other enactment applying to the Land; or
- (c) relieve the Owner from complying with any common law or any statute, regulation, bylaw or other enactment.

6. **Time of Essence** - Time is of essence of this agreement and the conveyance and transfer for which it provides.
7. **Tender** - Any tender of documents or money may be made upon the parties at their respective addresses set out in this agreement or upon their respective solicitors.
8. **No Other Agreements** - This agreement is the entire agreement between the parties regarding its subject and it terminates and supersedes all representations, warranties, promises and agreements regarding its subject.
9. **Benefit** - This agreement enures to the benefit of and is binding upon the parties and their respective heirs, executors, administrators, successors and assigns.
10. **Schedules** – The Schedules to this agreement form an integral part of this agreement.
11. **Interpretation** - 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.
12. **Governing Law** – This agreement will be governed by and construed in accordance with the laws of British Columbia.

As evidence of their agreement to be bound by the terms of this agreement, the parties have executed under seal the *Land Title Act* Form C to which this agreement is attached and which forms part of this agreement.

END OF DOCUMENT