

DISTRICT OF SECHELT

Emerson Clustered Residential Development - Housing Agreement Bylaw No. 534, 2014

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

WHEREAS:

- A. The owners of the lands wish to rezone and develop lands in the District of Sechelt and in connection with that development have agreed to make contributions for affordable housing which lands are legally described as follows:
- Lot 6, District Lot 4305, Plan 20036 (P.I.D. 006-922-589); and
Lot 7, District Lot 4305, Plan 20036 except portions in plans BCP14263 and BCP29814 District Lot 4305 Group 1 New Westminster District Plan 20036 (PID. 006-922-627);
- B. The District wishes to enter into a housing agreement in order to secure five (5) Affordable Housing Units;
- C. Section 905 of the Local Government Act provides that a council may, by bylaw, enter into an agreement for the provision of affordable housing;

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 “Emerson Clustered Residential Development-Housing Agreement Bylaw No. 534, 2014”.

2. PROVISIONS

- (a) By this Bylaw, Council authorizes the District of Sechelt to enter into a housing agreement with the property owners, 0813851 B.C. Ltd. and 0813859 B.C. Ltd., in respect of the lands legally described as:
- i. Lot 6, District Lot 4305, Plan 20036 (P.I.D. 006-922-589); and
 - ii. Lot 7, District Lot 4305, Plan 20036 except portions in plans BCP14263 and BCP29814 District Lot 4305 Group 1 New Westminster District Plan 20036 (PID. 006-922-627).

- (b) The housing agreement will be 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.

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

| | | | |
|-------------------------|------------------|--------|----------------|
| READ A FIRST TIME THIS | 19 th | DAY OF | February, 2014 |
| READ A SECOND TIME THIS | 19 th | DAY OF | February, 2014 |
| READ A THIRD TIME THIS | 19 th | DAY OF | February, 2014 |
| ADOPTED THIS | 5 th | DAY OF | March, 2014 |

Mayor

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

(Affordable Housing Units -Tower Road-Sechelt)

THIS AGREEMENT dated for reference the 21st day of January, 2014.

BETWEEN:

0813851 B.C. Ltd. (Inc. No 813851) 1001-1136 Pacific Street
Vancouver, BC, V6E 1T4, as to an undivided one half interest,
and

0813859 B.C. Ltd. (Inc. No 813859) 71558-1453 Johnston Road,
White Rock, B.C. V4B 3Z4 as to an undivided one half
interest, both by the Court Appointed Receiver Abakhan &
Associates Inc. as Receiver and not in its personal capacity.

(collectively the "**Owner**")

OF THE FIRST PART

AND:

DISTRICT OF SECHELT, a municipal corporation with an
office at 2nd Floor-5797 Cowrie Street, Sechelt, B.C.V0N 3A0

(the "**District**")

OF THE SECOND PART

(the above are also referred to individually as a Party or collectively as the
Parties)

WHEREAS:

- A. The Owner is the registered owner of those lands and premises in Sechelt, British Columbia, which lands are located near Tyler Road and Tower Road, Sechelt and more particularly known and described as:

Parcel Identifier 006-922-589
Lot 6 District Lot 4305 Plan 20036

And

Parcel Identifier 006-922-627
Lot 7 except portions in plans BCP14263 and BP29814 District Lot 4305 Group 1
New Westminster District Plan 20036

(referred to respectively as "Lot 6" and "Lot 7" and collectively the "**Lands**");

- B. In order to proceed to fourth and final reading of the proposed rezoning of the Lands to permit this type of development, the Owner has agreed to enter into this Housing Agreement and section 219 covenant to restrict the purchase price, use, occupancy and resale of an Affordable Housing Unit on the Affordable Housing Strata Lots and the Parties have therefore entered into this Agreement;
- C. The Owner proposes to subdivide and develop the Lands to create 50 bare land strata lots as shown generally on the proposed plan of subdivision, a reduced copy of which is attached to and forms part of this Agreement as **Schedule A**;
- D. On each of the proposed strata lots 1, 2, 22, 46, and 47, shown on Schedule A, the Owner proposes to construct an Affordable Housing Unit, as defined herein, in either a single family detached house form or as two single family housing units in a side by side zero lot line form, with each of those two single family housing units on its own separate legal strata lot, as shown on Schedule A, and where each Affordable Housing Unit is to have a sales price of no more than the Maximum Price as defined herein, for occupancy by Qualified Occupants and Family, both as defined herein; (individually an "**Affordable Housing Strata Lot**" and collectively the "**Affordable Housing Strata Lots**");
- E. Section 905 of the *Local Government Act*, R.S.B.C. 1996, Chapter 323, as amended, authorizes the District, by by-law, to enter into a Housing Agreement and file a notice of same in the Land Title Office, following which the Housing Agreement is binding on all persons who acquire an interest in the land affected by that agreement; and
- F. Section 219 of the *Land Title Act*, R.S.B.C. 1996, Chapter 250, includes the provision that a covenant in favour of a municipality may be registered as a charge against the title to land, whether of a negative or positive nature, in respect of the use of the land or the use of a building on the land or that the land is not to be built on except in accordance with the covenant, which covenant is binding on the covenantor and the covenantor's successors in title even if the covenant is not annexed to land owned by the covenantee.

NOW THEREFORE THIS AGREEMENT WITNESSETH in consideration of the premises, the respective covenants and agreements of the Parties as hereinafter set out and the sum of

\$1.00 and other good and valuable consideration now paid by the District to the Owner (the receipt and sufficiency of which is hereby acknowledged), the Parties hereto covenant and agree each with the other as follows:

1. **Definitions:**

In this Agreement, in addition to the terms defined within the text of this Agreement, the terms defined in Schedule B attached hereto and forming part hereof, shall have the meanings so indicated in that schedule and shall apply to the interpretation of this Agreement.

2. **Also Housing Agreement:**

The Owner hereby agrees with the District that the terms of this Agreement shall have the effect of both a Housing Agreement as contemplated under Section 905 of the *Local Government Act* and a covenant under Section 219 of the Land Title Act.

THE OWNER HEREBY COVENANTS AND AGREES with the District as a covenant under Section 219 of the Land Title Act, that:

3. The Lands shall be used only in accordance with this Agreement.

4. **Limited Use and Occupancy**

- a) An Affordable Housing Unit on an Affordable Housing Strata Lot shall be used and occupied only in accordance with the terms of this Agreement.
- b) The five Affordable Housing Strata Lots are to be those identified generally with hatching and notes on the reduced copy of the proposed overall subdivision plan of the Lands attached hereto as Schedule A;
- c) The Affordable Housing Unit on each Affordable Housing Strata Lot shall:
 - i) be used only as a permanent residence,
 - ii) be occupied as a permanent residence by at least one Qualified Occupant,
 - iii) be occupied only by a Qualified Occupant and the Family of that Qualified Occupant.
- d) Of the four proposed subdivision phases for a bare land strata subdivision on the Lands, no phased subdivision plan for any phase may be registered in the Land

Title Office unless:

- (i) for each of phases 1, 2, and 3, one Affordable Housing Unit has been constructed on an Affordable Housing Strata Lot and the District has issued the initial occupancy permit for that Affordable Housing Unit, and
 - (ii) for phase 4, two Affordable Housing Units have been constructed, each on an Affordable Housing Strata Lot and the District has issued the initial occupancy permit for both those Affordable Housing Units.
- e) Each Affordable Housing Unit shall be at least 65 square metres in floor area.

5. Sale and Rental Restrictions on Affordable Housing Units

- (a) The Owner shall not sell or otherwise dispose of its interest in an Affordable Housing Unit except in accordance with the terms of this Agreement.
- (b) The Owner shall not sell or otherwise dispose of its interest in an Affordable Housing Unit without the prior written consent of the Qualifying Body.
- (c) Whenever an Affordable Housing Strata Lot becomes available for sale, the Owner shall promptly give notice of that availability to the District and to the Qualifying Body if other than the District.
- (d) The Owner shall not sell an Affordable Housing Unit, or otherwise accept any offer to purchase its interest in an Affordable Housing Unit, for a purchase price more than the Maximum Price.
- (e) Nothing in this Agreement shall prevent the Owner from the granting of a charge in connection with the subdivision, rezoning or development of the Lands, or otherwise.
- (f) The Owner shall give prior written notice of this Agreement to any person to whom it proposes to sell or otherwise dispose of its interest in an Affordable Housing Unit (where "dispose" means to transfer by any method and includes assign, give, sell, grant, charge, convey, bequeath, devise, lease, divest, release and agree to do any of those things).
- (g) The Owner shall not rent or lease an Affordable Housing Unit to any person unless the Owner is the District or a bona fide not-for-profit organization approved in advance by the District, and then the Affordable Housing Unit may still only be rented or leased to a Qualified Occupant and on the condition that the Affordable Housing Unit:

- (i) be used only as a permanent residence,
- (ii) be occupied as a permanent residence by at least one Qualified Occupant,
- (iii) be occupied only by a Qualified Occupant and the Family of that Qualified Occupant,
- (iv) be subject to a written tenancy agreement, where
 - A. the tenancy agreement shall not exceed a fixed term of greater than one year,
 - B. the tenancy agreement shall state the rent as a monthly rent,
 - C. the tenancy agreement shall have a copy of this Agreement attached to it,
 - D. the tenancy agreement shall include a clause that the tenant shall not sublease or assign the Affordable Housing Unit,
 - E. the tenancy agreement shall include a clause that the Owner may terminate the tenancy, subject to applicable statutory requirements, if the tenant does not comply with the use and occupancy restrictions in this Agreement,
 - F. the rent shall not exceed the Maximum Rent,
 - G. the Owner shall not require a tenant to pay any extra charges over and above the Maximum Rent for strata fees, the use of common property or other common area that is available to all owners, nor to pay for property taxes or for any sewer or water utility taxes or similar charges included in a tax or other local service area charge, (but for clarity, tenants may be required to directly pay their bills for utilities for which they contract with the provider and for any metered utility use and to pay fines imposed by a strata corporation for breach of the bylaws and rules),
 - H. the Owner shall deliver a copy of the residential tenancy agreement to the District upon request, from time to time, and
 - I. the Owner shall not permit a tenancy agreement for an Affordable Housing Unit to be subleased or assigned except in compliance with this Agreement.
- (h) The Owner shall terminate a tenancy agreement if the tenant uses or occupies or allows the use or occupancy of the Affordable Housing Unit in breach of

this Agreement, such termination to be in accordance with the tenancy agreement and applicable statute.

- (i) 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, despite the approval by the Qualifying Body of a tenant as a Qualified Occupant.
- (j) 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.

6 Discharge and Failure to Sell

- (a) Once an occupancy permit has been issued by the District for the Affordable Housing Units agreed to be constructed in any one phase of subdivision on the Lands, the District shall, all at the cost of the Owner, release the Covenant and Housing Agreement notice from the title of all the other strata lots and any common property comprising that subdivision phase of the Lands, other than the Affordable Housing Strata Lots which contain the Affordable Housing Units in that phase of subdivision. In any event, if at any time all 5 Affordable Housing Strata Lots have been created on the Lands and an Affordable Housing Unit has already been constructed on each such Affordable Housing Strata Lot and each Affordable Housing Unit has already received an initial occupancy permit, the District shall, all at the cost of the Owner, release the Covenant and Housing Agreement notice from the title of all other parcels comprising that development on the Lands upon the request of the Owner, so that only the Affordable Housing Strata Lots shall remain burdened by the covenant and Housing Agreement (unless also discharged under the further terms of this section).
- (b) The Owner shall advise the District each time that an Affordable Housing Strata Lot containing an Affordable Housing Unit is being offered for sale and shall cooperate with the Qualifying Body in seeking a Qualified Occupant as a purchaser for such an Affordable Housing Strata Lot containing an Affordable Housing Unit.
- (c) The Owner shall permit the Qualifying Body to review the Owner's records related to any Owner's advertisements for sale and any offers received from those claiming to be Qualified Occupants to purchase the Affordable Housing Strata Lots containing the Affordable Housing Units.
- (d) If 150 days have passed since the issuance of an occupancy permit for any of the Affordable Housing Units and at least 150 days have passed since the Owner has

begun actively offering for sale that Affordable Housing Strata Lot containing the Affordable Housing Unit and if the Owner has complied with subsections b and c of this section, and the Owner has not received a binding offer at the Maximum Price from a Qualified Occupant as confirmed by the Qualifying Body to purchase that Affordable Housing Strata Lot containing an Affordable Housing Unit, then the Owner may:

- (i) give notice to the District to discharge this Agreement, including the covenant and Housing Agreement notice from title of that Affordable Housing Strata Lot,
- (ii) deliver a cheque for the payment of the Discharge Fee to the District, and
- (iii) deliver discharge documents for release of the covenant and removal of the notice for the Housing Agreement under this Agreement with respect to that particular Affordable Housing Strata Lot,

And the District shall then, within 30 days of the receipt of that notice from the Owner, together with the Discharge Fee and discharge documents, have the option to either:

- (iv) give notice to the Owner that the District intends to purchase that Affordable Housing Strata Lot from the Owner for the Maximum Price and retain the covenant and Housing Agreement on the title of that Affordable Housing Strata Lot, and promptly execute an agreement of purchase and sale for that Affordable Housing Strata Lot in the same form as prepared for prospective purchasers under any disclosure statement, with a completion date within 30 days of that notice from the District, and deliver that executed agreement together with the requisite deposit and the return of the Discharge Fee to the Owner, or
- (v) promptly execute and deliver the discharge documents for release of the covenant and removal of the notice for the Housing Agreement under this Agreement with respect to that particular Affordable Housing Strata Lot to the Owner for filing in the Land Title Office,

And in the event that the District takes no action to either give such notice or execute such discharge documents, and despite any other term herein, this Agreement shall no longer be enforceable as against that Affordable Housing Strata Lot and the Owner may seek any orders and resulting costs necessary to discharge the covenant and remove the notice of the Housing Agreement from title with respect to that particular Affordable Housing Strata Lot.

7. General Provisions

- (a) **Indemnity:** 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.

- (b) **Agreement Runs with Lands:** The terms of this Agreement shall run with the Lands and be binding on each and every owner of the Lands from time to time but from and after such time as the Owner ceases to have a legal interest in the Lands, the personal liability of the Owner shall likewise cease with respect to the Lands or that part as the case may be, arising by reason of any subsequent act or omission, whether by breach, default or otherwise with respect to the provisions of this Agreement.

- (c) **Notice of Housing Agreement:** For clarity, the Owner acknowledges and agrees that:
 - (i) 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,
 - (ii) the District is required to file a notice of the Housing Agreement in the Land Title Office against title to the Land, and
 - (iii) 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.

- (d) **Notices:** Any notices or other documents to be given or delivered pursuant to this Agreement will be addressed to the proper Party as follows:

- i) to the District:

District of Sechelt

2nd Floor-5797 Cowrie Street,

P.O. Box 129, Sechelt, B.C.VON 3A0

Attention: Corporate Officer

ii) to the Owner:

0813851 BC Ltd. (Inc. No 813851) and

0813859 BC Ltd. (Inc. No 813859) Abakhan & Associates Inc.

1120- 625 Howe Street, Vancouver, BC V6C 2T6

Attn: Philip McCourt

or such other address or successor Party as such Party may direct or advise from time to time by giving at least five (5) business days' notice in writing, by mail, to the other Party. Any notice or other document to be given or delivered pursuant to this Agreement will be sufficiently given or delivered if delivered to the particular Party at its address set out or determined in accordance with this paragraph and the notice shall be deemed complete upon delivery to a Party or person at the address for that Party or otherwise two (2) days after the day of delivery to the address for that Party. It is specifically agreed that for any notice or document to be validly given or delivered pursuant to this Agreement such document or notice shall be delivered and not mailed, unless as otherwise provided herein or agreed as between Parties.

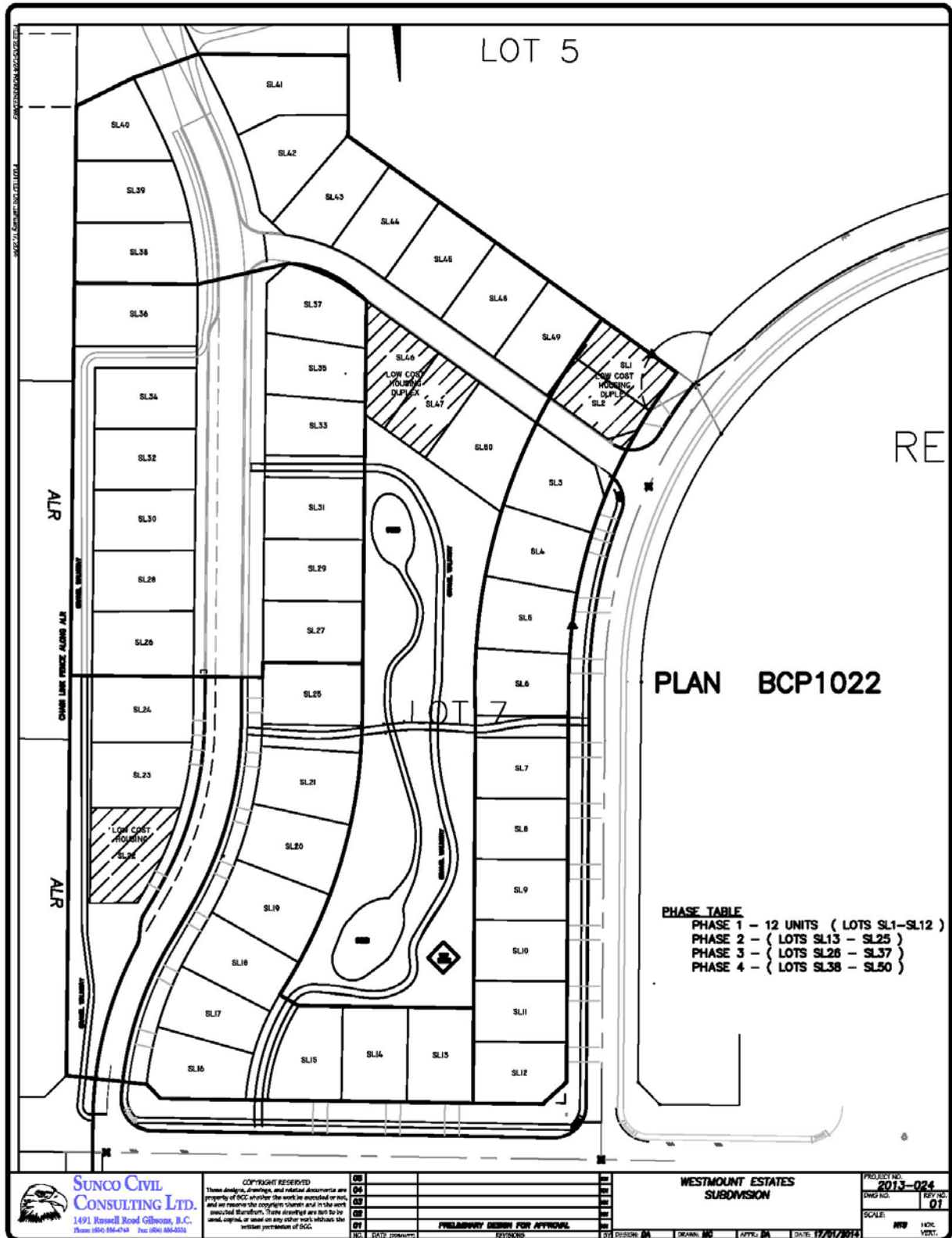
- (e) No Obligation to Enforce: The rights given to the District by this Agreement are permissive only and nothing in this agreement imposes any legal duty of any kind on the District to any one, or obliges the District to enforce this Agreement, to perform any act or to incur any expense in respect of this Agreement.
- (f) Enforcement by District: Without limiting the foregoing, if the Owner fails to enforce compliance with terms and conditions for limited use and occupancy, then it is specifically understood and agreed that the District shall be entitled, but shall not be obliged, to enforce the terms and conditions of this Agreement as against any person who is not a Qualified Occupant of an Affordable Housing Unit or Family of that Qualified Occupant. For the purposes of this Agreement, the Owner, without the need of further authorization, writings or documents, hereby irrevocably appoints the District as its agent with respect to the enforcement of this Agreement as against any person who is not a Qualified Occupant of an Affordable Housing Unit or Family of that Qualified Occupant, with respect to exercising all remedies set out in this Agreement and all other remedies available at law to the Owner as against such person or persons.
- (g) No Effect on Laws or Powers: This Agreement does not:
 - (i) 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;
- (ii) affect or limit the common law or any statute, bylaw or other enactment applying to the Land; or
 - (iii) relieve the owner from complying with any common law or any statute, regulation, bylaw or other enactment.
- (h) Priority: The Owner shall do everything necessary, at the Owner's expense, to ensure that this Agreement shall be registered against title to the Lands in priority to all liens, charges and encumbrances registered or pending registration against title to the Lands, save and except those specifically approved in writing by the District or in favour of the District.
- (i) Specific Performance: In the event of an actual or threatened breach of this Agreement by the Owner, the Owner agrees that except to the extent that monetary relief is specifically contemplated in this Agreement, the public interest 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.
- (j) Further Assurances: The parties hereto shall execute, do and cause to be done all such further deeds, acts, things and assurances as may be reasonably necessary to implement and give proper effect to the intention of this Agreement.
- (k) Waiver: 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.
- (l) Reasonableness: The parties will be reasonable at all times in exercising their contractual rights, forming their contractual opinions and performing their duties hereunder.
- (m) Number and Gender: Whenever the singular or masculine is used in this Agreement, the same shall be interpreted to include the plural and the feminine and the body corporate or politic and vice versa as the context so requires.
- (n) Continuing Statutes: reference to a statute or other enactment includes that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided.

- (o) Severance: If any section, subsection, sentence, clause, phrase, word or other part of this Agreement is for any reason held to be invalid by a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid shall not affect the validity of the remainder of this Agreement.
- (p) Applicable Law: This Agreement shall be subject to and interpreted in accordance with the laws of the Province of British Columbia and the parties hereby agree to attorn to that jurisdiction.
- (q) Enurement: This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns and the owners from time to time of the Lands referred to herein and all parties claiming through all such parties.

IN WITNESS WHEREOF the parties hereto acknowledge that this Agreement has been duly executed and delivered by the execution of the Form C (and Form D if applicable) forming part of this Instrument, as of the date first written above.

SCHEDULE A



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| | | |
|----|----------------|------------|
| 01 | DATE SUBMITTED | 02/20/2014 |
| 02 | DATE APPROVED | |
| 03 | DATE APPROVED | |
| 04 | DATE APPROVED | |
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| 09 | DATE APPROVED | |
| 10 | DATE APPROVED | |

WESTMOUNT ESTATES SUBDIVISION

PRELIMINARY DESIGN FOR APPROVAL

DATE: 11/27/2014

PROJECT NO: 2013-024
DRAWING NO: 01
SCALE: NTP
HOC: HRT

**SCHEDULE B
ADDITIONAL DEFINED TERMS**

- (a) **Affordable Housing Unit** means a house that is a one to two storey detached or zero lot line single family dwelling unit built on an Affordable Housing Strata Lot.
- (b) **Agreement** means this Section 219 Covenant and Housing Agreement and all Schedules attached thereto and any amendments or modifications to it from time to time.
- (c) **Consumer Price Index** means the All-items Consumer Price Index for Vancouver as compiled and published by Statistics Canada or its successor with respect to any particular time.
- (d) **Discharge Fee** means that amount payable by the Owner to the District for the discharge of the covenant and Housing Agreement under this Agreement from the title to each Affordable Housing Strata Lot containing an Affordable Housing Unit, which has been pre-determined for each of the Affordable Housing Strata Lots to be an amount of \$15,000.00, (which amount shall automatically increase annually by 1% plus the percentage increase (if any) in the Consumer Price Index from the first anniversary of the day on which the initial occupancy permit was issued by the District for that particular Affordable Housing Strata Lot), and which amount the District will then deposit in its fund for municipal affordable or low cost housing related purposes.
- (e) **Family** means one or more persons who live with a Qualified Occupant as a family unit, and which may include a spouse, sons, daughters, parents, brothers, sisters, and a care-giver, all of the Qualified Occupant and living together in the Affordable Housing Unit with the Qualified Occupant.
- (f) **Maximum Price** means an amount of \$219,000.00, (which amount shall automatically increase annually by 1% plus the percentage increase (if any) in the Consumer Price Index from the first anniversary of the reference date of this Agreement, as first written above, plus all applicable taxes, and plus or minus all applicable adjustments customary in real estate conveyancing practice in B.C.
- (g) **Maximum Rent** means an amount per month of \$1,000.00, (which amount shall automatically increase annually by the same percentage increase (if any) in the Consumer Price Index from the first anniversary of the reference date of this Agreement, and by the amount of increase once per year, as of the anniversary of a rental agreement by the amount equal to the increase in monthly operating strata fees for that strata lot as adopted in the strata corporation budget for the subject strata lot, subject always to any further limits as may be validly imposed by statute.

- (h) **Qualified Occupant** means a person approved by the Qualifying Body as a person who is a Qualified Occupant for an Affordable Housing Unit who together with their Family is determined to meet low income and other criteria that may be established from time to time by the District.

- (i) **Qualifying Body** means the District or a person or body designated by the District for the purposed of reviewing applications and approving an individual as a Qualified Occupant, and for the other purposed set out in in this Agreement.