

PURCHASE AND SALE AGREEMENT

THIS AGREEMENT dated for reference this 21st day of October, 2020.

BETWEEN:

CORPORATION OF THE TOWNSHIP OF ESQUIMALT,
a municipality incorporated under the laws of British Columbia, and
having an office at 1229 Esquimalt Road, Esquimalt, BC V9A 3P1

(the "**Vendor**")

OF THE FIRST PART

AND:

1237932 B.C. LTD.
(Incorporation No. BC1237932)
a company incorporated under the laws of British Columbia, and having a
registered office at 4566 Cordova Bay Road, Victoria, BC V8X 3V5

(the "**Purchaser**")

OF THE SECOND PART

WHEREAS:

- A. The Vendor is the owner of freehold title to the Property;
- B. The Vendor and Method Built Homes Inc. entered into a Memorandum of Understanding (the "MOU"), concerning the terms and conditions under which the Vendor is prepared to sell the Property, and under which the Purchaser is prepared to purchase and then develop the Property as a rental housing development.
- C. As contemplated under the MOU, the Vendor and the Purchaser, the company established by Method Built Homes Inc. to purchase and develop the Property, have now settled upon and have agreed to the terms and conditions of this Purchase and Sale Agreement, which incorporates and expands upon the business terms for the purchase and sale, and development of the Property as set out in the MOU.
- D. The Vendor has agreed to sell, and the Purchaser has agreed to purchase, all of the Vendor's right, title, and interest in and to the Property, on the terms and conditions set out in this Agreement.

NOW THEREFORE in consideration of \$10.00 and other good and valuable consideration now paid by each of the parties to the other (the receipt and sufficiency of which is acknowledged) and of the mutual covenants and agreements contained in this Agreement, the parties agree as follows:

1.0 DEFINITIONS

1.1 In this Agreement the following terms shall have the following meanings:

"Agreement" means this Purchase and Sale Agreement, including its Recitals and Schedules.

"Business Day" means a day other than a Saturday, Sunday, or statutory holiday.

"Closing Date" means the day that is 60 days following the waiver or fulfilment of all of the conditions precedent under sections 5.1, 5.3 and 5.6, provided that if that date falls on a Saturday, Sunday, or statutory holiday, the Closing Date will be the next Business Day.

"Contaminants" means any explosives, radioactive materials, asbestos materials, urea formaldehyde, chlorobiphenols, hydrocarbon contaminants, underground or above ground tanks, pollutants, contaminants, hazards, corrosive or toxic substances, special waste, hazardous waste or waste of any kind or any other substance the storage, manufacture, disposal, handling, treatment, generation, use, transport, remediation or release into the environment of which is prohibited, controlled, regulated or licensed under Environmental Laws.

"Council" means the elected Council of the Corporation of the Township of Esquimalt;

"Covenant" means the covenant, the terms of which will be generally as set out in Schedule "B" to this Agreement, to be registered against title to the Property pursuant to section 219 of the *Land Title Act* (British Columbia), in favour of the Vendor, and in priority to any security documents applicable to the Purchaser's mortgage financing.

"Deposit" means the sum of \$50,000.00, payable by the Purchaser in accordance with section 2.3 of this Agreement, comprising the First Deposit and the Second Deposit.

"Development Applications" means, collectively, the applications to be made by the Purchaser to the Council for:

- (a) the Zoning Bylaw Amendment;
- (b) the OCP Amendment; and
- (c) the Development Permit.

"Development Concept" means the package of site plan, floor plans, sections, elevations, character sketches, development statistics, and text that describe the proposed conceptual design for the Project, including the rental housing, landscaping, parking, transportation demand management ("TDM") measures,

access, and services, that meets the minimum requirements set out in Schedule "C" to this Agreement, and that is to be submitted by the Purchaser to the Vendor, for the Council's approval, in accordance with section 4.2(c) of this Agreement.

"Development Permit" means the development permit for the Project, issued under Division 7 of Part 14 of the *Local Government Act* (British Columbia), for which an application will be made by the Purchaser as contemplated under this Agreement.

"Director of Development Services" means the Director of Development Services for the Township of Esquimalt.

"Environmental Laws" means any and all statutes, laws, regulations, orders, bylaws, permits and other lawful requirements of any federal, provincial, municipal or other governmental authority having jurisdiction over the Lands, now or hereafter in force with respect in any way to the environment, health or occupational health and safety, product liability or transportation of dangerous goods, including all applicable guidelines and standards with respect to the foregoing as adopted by any of those governmental authorities from time to time and the principles of common law and equity.

"Gross Floor Area" has the same meaning as under the Township of Esquimalt Zoning Bylaw, 1992, No. 2050.

"Housing Agreement" means the housing agreement pursuant to 483 of the *Local Government Act* (British Columbia), the terms of which will be generally as set out in Schedule "D" to this Agreement, to be entered into by the Vendor and the Purchaser on or before the Closing Date, and that will be registered as a legal notation on the title to the Property in priority to any security documents applicable to the Purchaser's mortgage financing.

"Improvements" means all buildings, improvements, structures and fixtures attached to and forming part of the Property.

"OCP Amendment" means the amendment to the Township of Esquimalt Official Community Plan Bylaw, 2018, No. 2922, for which an application will be made by the Purchaser as contemplated under this Agreement.

"Option to Purchase" means the option to purchase, the terms of which will be generally as set out in Schedule "E" to this Agreement, that will be registered against title to the Property in favour of the Vendor on the Closing Date, in priority to any security documents applicable to the Purchaser's mortgage financing.

"Permitted Encumbrances" means all exceptions, reservations, legal notations, liens, charges, and encumbrances listed in attached Schedule "A", and also includes the Covenant, the Housing Agreement, and the Option to Purchase.

"Project" means the housing development comprised of a building containing 42 residential units that will be rental units, and 3 residential units that may be owner-occupied, and including parking, services, utilities and landscaping, to be constructed on the Property by the Purchaser following completion of the purchase and sale of the Property.

"Property" means the land situate in Esquimalt, British Columbia, with a civic address of 880 Fleming Street, Esquimalt, British Columbia, and legally described as

PIO 030-353-556

LOT 1 SECTION 10 ESQUIMALT DISTRICT PLAN EPP78715

"Purchase Price" means the sum of \$1,050,840.00, subject to adjustment as provided in this Agreement, and excluding Federal Goods and Services Tax ("GST"), Property Transfer Tax, or like charges.

"Reference Date" means the date set out at the top of the first page of this Agreement.

"Zoning Bylaw Amendment" means the amendment to the Township of Esquimalt Zoning Bylaw, 1992, No. 2050, for which an application will be made by the Purchaser as contemplated under this Agreement.

2.0 PURCHASE AND SALE

2.1 The Purchaser agrees to purchase from the Vendor, and the Vendor agrees to sell to the Purchaser, on the terms and conditions contained in this Agreement, a good and marketable freehold title to the Property, free and clear of all liens, charges and encumbrances, except for the Permitted Encumbrances.

2.2 There are no Improvements on or affixed to the Property.

2.3 The Purchase Price

The Purchaser will pay the Purchase price to the Vendor as follows:

- (a) as to \$25,000.00, by way of the initial deposit of \$25,000.00 that was paid by the Purchaser to the Vendor upon the execution of the MOU (the "First Deposit"), and the Vendor hereby acknowledges receipt of the First Deposit;
- (b) as to a further \$25,000.00, by payment of a further deposit of \$25,000.00 to the Vendor's solicitors "in trust" upon the execution of this Agreement (the "Second Deposit");
- (c) as to the balance of the Purchase Price by payment to the Vendor's Solicitor on or before the Closing Date in accordance with Article 7.0.

2.4 Application of Deposit

The First Deposit is non-refundable and may be retained by the Vendor in the event all of the Vendor's conditions under section 5.1, and the Purchaser's conditions under section 5.3 and 5.4, are not satisfied or waived within the time provided.

The Second Deposit will be:

- (a) paid to the Vendor:
 - (i) on the Closing Date on account of the Purchase Price, if the Vendor and the Purchaser complete the sale and purchase of the Property on the Closing Date; or
 - (ii) upon the default of the Purchaser, if the Purchaser is in default under this Agreement, unless such default is waived in writing by the Vendor and the Second Deposit so paid to the Vendor will be without prejudice to any other right or remedy of the Vendor; or
- (b) paid to the Purchaser:
 - (i) if the Purchaser does not notify the Vendor of the satisfaction or waiver of any of the conditions precedent set out in section 5.3 and 5.4 in the manner and within the time provided therein; or
 - (ii) upon the default of the Vendor and the Second Deposit so paid to the Purchaser will be without prejudice to any other right or remedy of the Purchaser, if the Vendor is in default of its obligation to complete the sale of the Purchased Property hereunder, unless such default is waived in writing by the Purchaser or the Purchaser has elected to complete the purchase of the Purchased Property without prejudice to any other right or remedy of the Purchaser.

2.5 Investment of Deposit

The Second Deposit will be invested by the Vendor's solicitors in an interest-bearing trust account or certificate of deposit, with interest for the account of the Purchaser unless the Second Deposit and interest thereon is paid to the Vendor under paragraph 2.4(a)(ii).

2.6 Adjustments to Purchase Price

- (a) The Vendor and Purchaser will make all adjustments to and including the Closing Date with respect to taxes, utilities, rents, and all other items normally adjusted between a vendor and purchaser on the sale of similar property.
- (b) In the event that the Zoning Bylaw Amendment, as adopted by Council, allows the Project to be developed to a Gross Floor Area greater than 35,028

square feet, then the Purchase Price payable by the Purchaser shall be increased by Thirty (\$30.00) Dollars for each square foot of Gross Floor Area allowed under the Zoning Bylaw Amendment in excess of 35,028 square feet.

3.0 REPRESENTATIONS AND WARRANTIES

3.1 Vendor's Representations and Warranties

The Vendor represents and warrants to the Purchaser that as of the date of this Agreement and the Closing Date:

- (a) the Vendor is a municipal corporation duly incorporated and validly existing under the laws of British Columbia and duly qualified to purchase and own the Property and the Vendor has full power, authority and capacity to enter into this Agreement and carry out the transactions contemplated herein, and any action required to allow the Vendor to carry out the transactions contemplated hereby have been duly and validly authorized by all necessary corporate proceedings.
- (b) the Vendor is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada);
- (c) the Vendor is the registered and beneficial owner of the Property, and has a good and marketable title to the Property free and clear of all liens, charges, and encumbrances except for the Permitted Encumbrances; and
- (d) no lien under the *Builders Lien Act* exists or is claimed with respect to the Property nor any part of the Property.

3.2 Survival of Vendor's Representations and Warranties

The representations and warranties contained in section 3.1 shall survive the Closing Date and shall continue in full force and effect for the benefit of the Purchaser after the Closing Date notwithstanding any independent inquiry or investigation by the Purchaser or the waiver by the Purchaser of any condition set out in section 5.3 and 5.4, the subject matter of which is contained in a representation or warranty in this Agreement.

3.3 As Is Purchase

The Purchaser acknowledges and agrees that it is purchasing the Property "as is, where is", and without limiting the foregoing:

- (a) the Purchaser acknowledges and agrees with the Vendor that the Vendor, its elected and appointed officials, officers, employees and agents have made no representations, warranties, inducements, guarantees, promises, consents, conditions or agreements, direct or indirect or express or implied

in connection with the Property, including, without limitation, the suitability of the Property for the Project, the costs of development of the Property, the availability of site services and utilities for the Property, the existence of any latent or patent defects, soil conditions, the presence of Contaminants, or the compliance of the Property with Environmental Laws, with the intent that the Purchaser is assuming all risks and costs associated with the conditions on the Property;

- (b) the Purchaser acknowledges that it has used and hereafter will use its own due diligence, resources and independent investigations to satisfy itself fully on every aspect, matter, information or thing relating to, or in connection with, the condition of the Property respecting any of the matters referred to in section 3.3(a), including the condition of the soil, the existence of any latent or patent defects, soil conditions, the presence of Contaminants, or the compliance of the Property with Environmental Laws, and that no statement or information about the Property supplied to the Purchaser by the Vendor, its elected or appointed officials, officers, employees or agents forms part of this Agreement or has been relied upon by the Purchaser;
- (c) the Purchaser will assume, effective on the Completion Date, and at its own cost, full and complete responsibility for the environmental condition of the Property, including, without limitation, any site remediation work, if any, required in respect of the Property.

3.4 Purchaser's Representations and Warranties

The Purchaser represents and warrants to the Vendor that as of the date of this Agreement and the Closing Date:

- (a) the Purchaser is a body corporate duly incorporated and existing under the laws of British Columbia and duly qualified to purchase and own the Purchased Property, and the Purchaser has full power, authority and capacity to enter into this Agreement and carry out the transactions contemplated herein;
- (b) there is no action or proceeding pending or to the Purchaser's knowledge threatened against the Purchaser before any court, arbiter, arbitration panel, administrative tribunal or agency which, if decided adversely to the Purchaser, might materially affect the Purchaser's ability to perform its obligations hereunder;
- (c) neither the Purchaser entering into this Agreement nor the performance of its terms will result in the breach of or constitute a default under any term or provision of any indenture, mortgage, deed of trust or other agreement to which the Purchaser is bound or subject; and

- (d) the Purchaser is duly registered under Subdivision D of Division V of the *Excise Tax Act* and the registration number assigned to the Purchaser by Canada Revenue Agency is 750739732BC0001.

3.5 Survival of Purchaser's Representations and Warranties

The representations and warranties contained in section 3.4 shall survive the Closing Date and shall continue in full force and effect for the benefit of the Vendor after the Closing Date notwithstanding any independent inquiry or investigation by the Vendor or the waiver by the Vendor of any condition set out in section 5.1, the subject matter of which is contained in a representation or warranty in this Agreement.

4.0 **COVENANTS**

4.1 Vendor's Covenants

The Vendor covenants with the Purchaser to:

- (a) permit the Purchaser and its representatives to enter onto the Property and carry out such inspections, tests, studies, appraisals, surveys and investigations of the Property as the Purchaser may reasonably require, provided that the Purchaser must first provide advance written notice of a request to enter onto the Property in accordance with section 4.2(a);
- (b) grant the authorizations reasonably required by the Purchaser to submit the Development Applications to the Council for consideration.

4.2 Purchaser's Covenants

The Purchaser covenants with the Vendor:

- (a) to provide at least 48 hours notice in writing to the Vendor of the Purchaser's request to enter onto the Property for one or more of the purposes referred to in section 4.1 (a);
- (b) to indemnify and hold harmless the Vendor from and against any claim, demand, action, or cause of action arising from related to any personal injury, bodily injury (including death) or property damage sustained by any person as a result of the entry onto the Property by the Vendor or its directors, officers, employees, agents and contractors for one or more of the purposes referred to in section 4.1 (a);
- (c) at the Purchaser's sole cost, to prepare the Development Concept and to submit the Development Concept to the Vendor, on or before the date that is 180 days after the date this Agreement is executed by the Vendor and the Purchaser, for consideration of the Council;

- (d) at the Purchaser's sole cost, to prepare the Development Applications and to submit the Development Applications to the Vendor, for consideration of the Council, within the following time periods:
 - (i) in the case of the OCP Amendment and the Zoning Bylaw Amendment, on or before the date that is 180 days after the Reference Date;
 - (ii) in the case of the Development Permit, on or before the date that is 150 days after final adoption of the Zoning Bylaw Amendment;
- (e) to ensure that the Development Applications are generally consistent with the Development Concept, as approved by the Council;
- (f) to prepare and submit the Development Applications in compliance with the requirements of the Township of Esquimalt Development Application Procedures and Fees Bylaw No. 2791, 2012 (the "Development Application Bylaw"), including the payment of all application fees and other fees and charges, and the provision of security, where required by the Development Application Bylaw and the *Local Government Act*;
- (g) without limiting the requirements of section 4.2(f), and in particular without limiting the authority of the Director of Development Services to require the submission of development approval information under Part III of the Development Application Bylaw, at the Purchaser's sole cost, to prepare and submit to the Vendor all information, studies, reports that are reasonably required by the Vendor for Council's consideration of the Development Applications, including but not limited to:
 - (i) the report of a Certified Arborist (as defined in the Tree Protection Bylaw, 2015, No. 2837) respecting the trees situated on the Property;
 - (ii) a Transportation Demand Management Report;
 - (iii) a civil engineering study concerning the Project's requirements for site servicing and utilities.

4.3 The terms of reference for the studies and reports referred to in section 4.2(g) shall be as agreed to by the Vendor and Purchaser, both acting reasonably. For certainty, the Vendor's agreement to the said terms of reference shall not oblige the Council to accept the results and recommendations of the studies and reports referred to in section 4.2(g), when considering the Development Applications.

5.0 CONDITIONS

5.1 The obligation of the Vendor to complete the purchase and sale of the Property on the Closing Date is subject to the following conditions precedent being in effect or satisfied on or before the dates set out below:

- (a) on or before the date which is 360 days after the Reference Date, the Council having approved, in principle, the Development Concept;
- (b) on or before the date which is 360 days after the Reference Date, both Parties having agreed upon the terms and conditions of the Housing Agreement, including any additional terms and conditions that are required as a result of the proposed strata subdivision of the Project;
- (c) on or before the date which is 360 days after the Reference Date, the Purchaser providing the Vendor with details of the structure of the proposed strata subdivision of the Project including strata bylaws, unit entitlement and voting rights, and the Vendor being satisfied that the proposed strata subdivision of the Project will not compromise the functioning of the residential rental portion of the Project;
- (d) on or before the date which is 360 days after the Reference Date, both Parties having agreed upon the terms and conditions of the Covenant; and
- (e) on or before the date which is 360 days after the Reference Date, both Parties having agreed upon the terms and conditions of the Option to Purchase.

5.2 All of the conditions precedent in section 5.1 are for the Vendor's sole benefit and each may be waived unilaterally by the Vendor, at the Vendor's election. If the Vendor does not give the Purchaser notice of the satisfaction or waiver of all such conditions precedent within the time provided therein, then this Agreement and the Vendor's obligation to sell the Property will be at an end.

5.3 The obligation of the Purchaser to complete the purchase of the Property on the Closing Date is subject to the following conditions precedent being in effect and satisfied on or before the dates set out below:

- (a) on or before the date which is thirty days after the Reference Date, the Purchaser having satisfied itself in its sole discretion as to the suitability of the Property for the construction of the Project, including the suitability of the soil conditions;
- (b) on or before the date which is thirty days after the Reference Date, the Purchaser having received from the Vendor a Phase One Environmental Report for the Property, and the Purchaser being satisfied with such report; and
- (c) on or before the date which is thirty days after the Reference Date, the Purchaser having received from the Purchaser's solicitors a report on the title to the Property that is acceptable to the Purchaser.

- 5.4 The obligation of the Purchaser to complete the purchase of the Property on the Closing Date is further subject to the following condition precedent being in effect and satisfied on or before the date set out below:
- (a) on or before the date on which Council holds a public hearing into the OCP Amendment and the Zoning Bylaw Amendment, the Purchaser being satisfied with the results of the civil engineering study concerning the Project's requirements for site servicing and utilities, as referred to in section 4.2(g), and with the estimated cost of servicing the Property as stated in that study.
- 5.5 All of the conditions precedent in section 5.3 and 5.4 are for the Purchaser's sole benefit and each may be waived unilaterally by the Purchaser, at the Purchaser's election. If the Purchaser does not give the Vendor notice of the satisfaction or waiver of all of such conditions precedent within the time therein provided, then this Agreement and the Purchaser's obligation to purchase the Property will be at an end.
- 5.6 In consideration of Ten (\$10.00) Dollars non-refundable paid by the Purchaser to the Vendor and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the Vendor, the Vendor agrees not to revoke its acceptance of the Purchaser's offer contained herein while this Agreement remains subject to any of the conditions precedent in section 5.3 and 5.4.
- 5.7 The obligation of the Vendor and the Purchaser to complete the sale and purchase of the Property on the Closing Date is subject to the Council having:
- (a) adopted the OCP Amendment and the Zoning Bylaw Amendment, on or before the date which is 540 days after the Reference Date;
 - (b) authorized the issuance of the Development Permit on or before the date which is 180 days after the City's receipt of a complete Development Permit application for the Project.
- 5.8 The conditions under section 5.7 are for the benefit of both the Vendor and the Purchase and cannot be waived.
- 5.9 The parties agree that this Agreement will become an unconditional contract for sale and purchase of the Property upon the satisfaction or waiver of all of the conditions precedent in sections 5.1, 5.3, 5.4 and 5.7.
- 5.10 Closing Conditions
- (a) The obligation of the Vendor to complete the sale of the Property on the Closing Date is subject to the Purchaser's execution and delivery of the Covenant, the Housing Agreement, and the Option to Purchase, in

accordance with the requirements of Article 7, following Council's approval of the Development Applications. This condition cannot be waived.

6.0 RISK/POSSESSION

6.1 The Passing of Risk

The Property is at the risk of the Vendor until completion of the closing under Article 7.

6.2 Possession

The Purchaser shall have the right to vacant possession of the Property on the Closing Date, subject only to the Permitted Encumbrances.

7.0 CLOSING PROCEDURE

7.1 The Closing

The closing of the purchase and sale of the Property will occur on the Closing Date.

7.2 Vendor's Documents

On or before the Closing Date, the Vendor's solicitor will prepare the following for execution:

- (a) a certificate regarding GST registration and status of the Vendor, if required by the Purchaser;
- (b) the Covenant;
- (c) the Housing Agreement;
- (d) the Option to Purchase;
- (e) such other documents and assurances as may be reasonably required by the Vendor to give full effect to the intent and meaning of this Agreement, including but not limited to a statutory declaration of a senior officer of the Purchaser confirming that the representations and warranties of the Purchaser under section 3.4 of this Agreement are true and correct as of the Closing Date.

7.3 Purchaser's Documents

On or before the Closing Date, the Purchaser's solicitor will prepare the following for execution:

- (a) a certificate regarding GST registration and status of the Purchaser;

- (b) a Form A Freehold Transfer (the "**Transfer**");
- (c) the Vendor's statement of adjustments;
- (d) such other documents and assurances as may be reasonably required by the Purchaser to give full effect to the intent and meaning of this Agreement.

7.4 Delivery of Closing Documents

- (a) The closing documents referred to in section 7.2(b) to (e) will be delivered to the Purchaser's solicitors at least three days before the Closing Date, for execution by the Purchaser, and will then be returned to the Vendor's solicitors, duly executed, on or before the Closing Date.
- (b) The closing documents referred to in section 7.3(a) to (d) will be delivered to the Vendor's solicitors at least three days before the Closing Date, and will then be returned to the Purchaser's solicitors, duly executed, on or before the Closing Date.

7.5 Payment in Trust

- (a) On or before the Closing Date the Purchaser will pay to the Purchaser's solicitors in trust the balance of the Purchase Price, as adjusted under section 2.6, less the amount to be advanced to the Purchaser on the Closing Date under any mortgage financing arranged by the Purchaser.
- (b) If the Purchaser is relying upon mortgage financing to finance the Purchase Price, and if the Purchaser's mortgagee will not advance funds until after receipt of a satisfactory post-registration search, the Purchaser, while still required to pay the Purchase Price on the Closing Date, may wait to pay the Purchase Price to the Vendor until after the Transfer and Purchaser's mortgage documents have been submitted for registration in the appropriate Land Title Office, and after receipt of the amount to be advanced to the Purchaser on the Closing Date by the Purchaser's mortgagee, but only if, before the filings referred to in section 7.6(a), the Purchaser has: (a) fulfilled all the conditions for funding of the Purchaser's mortgagee except submitting for registration the security documents applicable to such mortgage financing, and (b) made available to the Vendor undertakings of the Purchaser's solicitor, the terms of which undertakings must be satisfactory to the Vendor's solicitor, acting reasonably, to:
 - (i) pay the Purchase Price upon the completion of the filings referred to in section 7.6, and the advance by the Purchaser's mortgagee of the mortgage proceeds; and
 - (ii) in the event the Purchaser's mortgagee fails or refuses to advance the mortgage proceeds on the Closing Date following the filings

referred to in section 7.6, to forthwith withdraw or cause to be withdrawn the applications to register the Transfer and the security documents applicable to the mortgage financing arranged by the Purchaser, and to return the executed Transfer to the Vendor's solicitor.

7.6 Registration

- (a) Forthwith following the payment in section 7.5, and after receipt by the Purchaser's solicitors of the documents and items referred to in section 7.4(b) and receipt by the Vendor's solicitors of the documents referred to in section 7.4(a), the Purchaser will cause the Purchaser's solicitors to file the Transfer in the appropriate Land Title Office concurrently with any security documents applicable to any mortgage financing arranged by the Purchaser in connection with the purchase of the Property.
- (b) Concurrently with the filings referred to in section 7.6(a), the Vendor's solicitors will file in the appropriate Land Title Office:
 - (i) the Covenant;
 - (ii) a legal notation concerning the Housing Agreement;
 - (iii) the Option to Purchase.
- (c) The filings referred to in this section 7.6 will be submitted in such an order that the Covenant, the Housing Agreement and the Option to Purchase shall have priority over any security documents applicable to mortgage financing arranged by the Purchaser.

7.7 Closing

Forthwith following the filings referred to in section 7.6 and upon the Purchaser's solicitors being satisfied as to the Purchaser's title to the Property after conducting a post filing for registration check of the property index disclosing only the following:

- (a) the existing title number(s) to the Land;
- (b) the Permitted Encumbrances;
- (c) the pending number assigned to the Transfer;
- (d) the pending numbers assigned to any security documents applicable to any mortgage financing arranged by the Purchaser in connection with the purchase of the Property;

the Purchaser will cause the Purchaser's solicitors, forthwith upon receipt by them of the proceeds of any mortgage financing arranged by the Purchaser in connection

with the purchase of the Purchased Property, to deliver to the Vendor's solicitors a trust cheque for the balance of the Purchase Price under section 2.3(c), as adjusted under section 2.6, and

- (i) the documents and assurances referred to in section 7.2(e) will be released to the Vendor, and
- (ii) the Second Deposit will be released to the Vendor, and any interest earned on the Second Deposit will be released to the Purchaser.

7.8 Concurrent Requirements

It is a condition of this Agreement that all requirements of this Article 7.0 are concurrent requirements and it is specifically agreed that nothing will be completed on the Closing Date until everything required to be paid, executed and delivered on the Closing Date has been so paid, executed and delivered and until the Purchaser's solicitors have satisfied themselves as to the Purchaser's title under section 7.7.

7.9 Election

If on the Closing Date any of the representations or warranties made by the Vendor are untrue (in any material respect) or the Vendor is in default in any material respect under any of the covenants and agreements to be observed or performed by the Vendor under this Agreement, the Purchaser may elect not to complete the purchase of the Property under this Agreement or to complete the purchase of the Property under this Agreement, in either case without prejudice to any rights or remedies the Purchaser may have in respect of the Vendor's breach or default.

8.0 MISCELLANEOUS

8.1 Time

Time is of the essence of this Agreement and the transactions contemplated in this Agreement notwithstanding the extension of any of the dates under this Agreement.

8.2 Relationship of the Parties

Nothing in this Agreement shall be construed so as to make the Purchaser a partner of the Vendor or an owner of the Property for any purpose, including the *Builders Lien Act*, until the completion of the purchase and sale on the Closing Date, and the Vendor shall indemnify and save the Purchaser harmless from any and all costs, expenses, damages, claims, or liabilities which may be incurred with respect to the Property before the Closing Date which the Purchaser is not obligated to assume under this Agreement, and this provision shall survive the Closing Date or the termination of this Agreement.

8.3 Notices

- (a) Each notice sent pursuant to this Agreement ("**Notice**") shall be in writing and shall be sent to the relevant Party at the relevant address, facsimile number or e-mail address set out below. Each such Notice may be sent by registered mail, by commercial courier, by facsimile transmission, or by electronic mail.
- (b) The Contact Information for the parties is:

The Vendor:	The Purchaser:
1229 Esquimalt Road, Esquimalt, BC V9A 3P1	4566 Cordova Bay Road, Victoria, BC V8X 3V5
Attention: Laurie Hurst, Chief Administrative Officer	Attention: Rajinder Sahota
laurie.hurst@esquimalt.ca	

- (c) Each Notice sent by electronic mail ("E-Mail Notice") must show the e-mail address of the sender, the name or e-mail address of the recipient, and the date and time of transmission, must be fully accessible by the recipient, and unless receipt is acknowledged, must be followed within twenty-four (24) hours by a true copy of such Notice, including all addressing and transmission details, delivered (including by commercial courier) or sent by facsimile transmission.
- (d) Subject to sections 8.3(f) through (h) each Notice shall be deemed to have been given or made at the following times:
- (i) if delivered to the address (including by commercial courier), on the day the Notice is delivered;
 - (ii) if sent by registered mail, seven (7) days following the date of such mailing by sender;
 - (iii) if sent by facsimile transmission, on the date the Notice is sent by facsimile transmission; or
 - (iv) if sent by electronic mail, on the date the E-Mail Notice is sent electronically by e-mail by the sender.

- (e) If a Notice is delivered, sent by facsimile transmission or sent by electronic mail after 4:00 p.m., or if the date of deemed receipt of a Notice falls upon a day that is not a Business Day, then the Notice shall be deemed to have been given or made on the next Business Day following.
- (f) Notice given by facsimile transmission in accordance with the terms of this section 8.3 will only be deemed to be received by the recipient if the sender's facsimile machine generates written confirmation indicating that the facsimile transmission was sent.
- (g) If normal mail service, facsimile or electronic mail is interrupted by strike, slow down, force majeure or other cause beyond the control of the parties, then a Notice sent by the impaired means of communication will not be deemed to be received until actually received, and the party sending the Notice shall utilize any other such services which have not been so interrupted or shall personally deliver such Notice in order to ensure prompt receipt thereof.
- (h) Each Party shall provide Notice to the other Party of any change of address, facsimile number, or e-mail address of such Party within a reasonable time of such change.

8.4 Further Assurances

Each of the parties shall, at the expense of the other party, execute and deliver all such further documents and do such further acts and things as the other party may reasonably request from time to time to give full effect to this Agreement

8.5 Assignment

The Purchaser may assign its rights under this Agreement with the prior written consent of the Vendor, which may be withheld in the Vendor's sole discretion. As an exception, the Vendor may assign its rights under this Agreement to another business corporation that is an affiliate of the Purchaser within the meaning of the *Business Corporations Act* (British Columbia).

8.6 Non-merger

None of the provisions of this Agreement shall merge in the transfer of the Property or any other document delivered on the Closing Date, and the provisions of this Agreement shall survive the Closing Date.

8.7 Payment of Fees

Each party shall pay its own legal fees. The Purchaser shall be responsible for all registration fees payable in connection with registration of the Transfer.

8.8 Goods and Services Tax

The Purchase Price does not include GST. On the Closing Date, the Purchaser will pay to the Vendor, in addition to the Purchase Price, the amount of GST eligible in respect of the transactions contemplated in this Agreement or, if the Purchaser is registered for GST purposes on the Closing Date, the Purchaser may self-assess the GST and account directly to the Canada Revenue Agency therefor, if the Purchaser provides the Vendor with a certificate signed by an officer of the Purchaser confirming the Purchaser's registration number and the Purchaser's registered status.

8.9 Binding Effect

This Agreement shall enure to the benefit of and be binding upon the parties, their respective heirs, executors, administrators, and other legal representatives and, to the extent permitted in this Agreement, their respective successors and assigns.

8.10 No Derogation from Statutory Powers

Nothing in this Agreement shall be interpreted as prejudicing or impairing the Purchaser in the exercise of any statutory legislative powers under the *Local Government Act*, the *Community Charter* or any other enactment all of which may be executed as if this Agreement had not been exercised. Without limiting the foregoing, the Council's approval of the Development Concept pursuant to section 5.1(a) of this Agreement shall not fetter the exercise of its statutory legislative powers in relation to the adoption of the OCP Amendment and Zoning Bylaw Amendment.

8.11 Extended Meanings

Words importing the singular number include the plural and vice versa, and words importing the masculine gender include the feminine and neuter genders.

8.12 Headings

The headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

8.13 Articles

For the purposes of this Agreement, except as otherwise expressly provided herein all references in this Agreement to an article, section, subsection, paragraph, or other subdivision, or to a schedule, is to the article, section, subsection, paragraph or other subdivision of or schedule to this Agreement unless otherwise specifically stated.

8.14 Applicable Law

This Agreement shall be interpreted in accordance with the laws of British Columbia.

8.15 Waiver

Except as may be specifically agreed in writing, no action or failure to act by a party to this Agreement shall constitute a waiver of any right or duty afforded any of them under this Agreement nor shall any such action or failure to act constitute an approval of or acquiescence in any breach of this Agreement.

8.16 Entire Agreement

This Agreement constitutes the entire agreement between the parties with respect to the subject matter of the Agreement and contains all of the representations, warranties, covenants and agreements of the respective parties, and may not be amended or modified except by an instrument in writing executed by all parties. This Agreement supersedes all prior agreements, memoranda, and negotiations between the parties.

8.17 Schedules

The Schedules attached to this Agreement form part of this Agreement.

IN WITNESS WHEREOF the parties have executed this Agreement.

1237932 B.C. LTD.,

by its authorized signatories:

by its authorized signatories:

Name: Rajinder Singh Sahota, Director

Name: _____

Township of Esquimalt,

by its authorized signatories:

by its authorized signatories:

Mayor: R. Dumas, Mayor

City of Esquimalt

10500 1st St, Esquimalt, BC

Rajinder Singh Sahota
Lawyer
300-376 Harbour Road
Victoria BC

(Una) Ensaheo

Rachel Dumas
Corporate Officer
Corporation of the Township of Esquimalt
1229 Esquimalt Rd, Esquimalt, BC V1A 3P6
A Commissioner for Taking Affidavits for
British Columbia

SCHEDULE "A" Permitted

Part Encumbrances

(a) Charges

Undersurface Rights; M76301; Her Majesty the Queen in Right of the Province of British Columbia; Inter Alia

Undersurface Rights; 106260G; Puget's Sound Agricultural Society; Inter Alia

Statutory Right of Way; CA5052415; Corporation of the Township of Esquimalt

(b) Legal Notations

None

(c) Exceptions and Reservations

None

Schedule "8"

Covenant Terms

The Covenant shall be prepared by the Vendor's solicitors and shall provide that that the Land may only be developed in accordance with the Development Concept as approved by Council. Without limiting the foregoing, the Covenant may include conditions such as the following, as included in the Development Concept:

1. Conditions for the use of visitor parking stalls;
2. The Purchaser's obligation to provide evidence satisfactory to the Vendor that agreed upon TOM measures such a provision of BC Transit eco-passes and car share co-op memberships to tenants have been met;
3. Requirements for retention of trees on the Property;
4. That the Property may not be subdivided under the Land Title Act or the Strata Property Act for a period of 25 years following issuance of an occupancy permit, with the exception of a subdivision under the Strata Property Act that divides the building into a maximum of four strata lots, three of which will be the residential units that may be owner-occupied, and one of which will consist of the 42 residential units that are required to be rental units.

Schedule "C" Development Concept

Development Requirements

The Development Concept must comply with these requirements:

1. The maximum height of the Project is 4 storeys above grade, subject to the following. The Development Concept may provide for a maximum height of 6 storeys above grade, subject to Council's approval of a rezoning application that allows development to that height. The Purchaser may submit a rezoning application for up to 6 storeys with the understanding that Council may or may not approve the rezoning application in its discretion.
2. The total Gross Floor Area of the Project is not less than 35,000 square feet.
3. The density of development of the Project will be a maximum of FAR 1.5 as measured in the Township of Esquimalt Zoning Bylaw, 1992, No. 2050.
4. The minimum number of residential units of the Project will be 40. Council may consider a Development Concept with fewer units if the Purchaser provides adequate justification to support fewer units.
5. Forty-two of the residential units will be rental units, and three residential units may be owner-occupied. The Project cannot be strata titled except as described in Schedule B to this Agreement.
6. The residential units will include a mix of 1-bedroom, 2-bedroom, and 3-bedroom, units, with no fewer than 5% of the units being 3-bedroom.
7. On-site parking will be provided to the satisfaction of the Township. Notwithstanding Item 6 of Section 23.5 of Development Permit Area 6 (Multifamily Residential), the Township prefers that on-site parking for the Project will be underground except for loading spaces and some drop-off parking.
8. Vehicular access to the site will be provided from Fleming Street, unless the Purchaser acquires one or more lots adjacent to the Property on the west side and assembles such lot(s) with the Property, in which case vehicular access to the Property may be provided from Lampson Street, subject to approval of the Township of Esquimalt.
9. The Development Concept will show the existing trees on the Property that are to be retained.
10. The Project will incorporate sustainability features to be agreed on between the parties.
11. The form and character of the Development Concept will fit within the neighbourhood context.

If the Property becomes part of an assembly and larger development with other adjacent lots, the requirements set out above will continue to apply to the Property, except that the minimum gross floor area and minimum number of units for the overall Development Concept will be increased commensurate with the increase in lot area.

Schedule "D" Housing

Housing Agreement Terms

The Housing Agreement shall be prepared by the Vendor's solicitors and shall include the following terms and conditions:

1. The Housing Agreement will state that the housing units in the Project cannot be strata titled or otherwise made available for ownership by individual owners, except as described in Schedule B to this Agreement. The Project is to remain in rental tenure for 25 years from the date of occupancy, except for three residential units which may be owner-occupied.
2. The Housing Agreement will require that if the Project is strata titled as referred to in section 1 of this Schedule D, the strata bylaws must not provide for any restrictions on rental of the 42 residential units that are to be rental units (the "Residential Rental Units").
3. The Housing Agreement will include such other terms and conditions that the Vendor and Purchaser agree are required to ensure that the strata subdivision of the Project does not compromise the functioning of the residential rental portion of the Project.
4. The Housing Agreement will set out an agreed-on initial rental rate structure for the Residential Rental Units in the Project. The rent structure is anticipated to be along these lines:
 - a. Category 1: Approximately one-third of the Residential Rental Units will be rented at Market Rent. Prior to the Vendor producing the Housing Agreement, the Purchaser will propose the Market Rent for consideration by the Vendor.
 - b. Category 2: Approximately one-third of the Residential Rental Units will be rented at 90% of the agreed-on market rent for Category 1.
 - c. Category 3: Approximately one-third of the Residential Rental Units will be rented at rates that equal 30% of the Housing Income Limits for respective unit types, as defined by BC Housing for the Victoria area for the year in which the Project is ready for occupancy.
5. As nearly as possible, the 2-bedroom and 3-bedroom units will each be distributed equally among the three rental Categories defined in paragraph 2.
6. The Housing Agreement will set out a schedule or formula for determining future rent increases, or alternatively will specify that rent increases are subject to provincial regulations pursuant to the BC Residential Tenancy Act.

7. The Housing Agreement will specify the process that will be used to determine eligible occupants of the Residential Rental Units in Categories 2 and 3.

Schedule "E"

Option to Purchase Terms

The Option to Purchase shall be prepared by the Vendor's solicitors and shall include the following terms and conditions.

The Option to Purchase will provide that if the Purchaser fails to commence construction of the Project by the date which is 365 days after the issuance of a Building Permit for the Project, the Vendor shall have the right but not the obligation to recover ownership of the Property for a price equal to 100% of the Purchase Price.

The Option to Purchase shall be registered on title to the Property concurrently with the closing under this Agreement.