

APPENDIX F

STANDARD CHARGE TERMS

FILED BY: BOWEN ISLAND MUNICIPALITY (Bowen Island Housing Corporation)

STANDARD RIGHT OF FIRST REFUSAL AND OPTION TO PURCHASE

The following standard charge terms are deemed to be included in every right of first refusal and option to purchase in which the set is referred to by its filing number as provided by Section 235 of the *Land Title Act*.

WHEREAS:

- A. The Owner is the registered owner of the Land (hereinafter defined);
- B. The Owner has entered into a Housing Agreement with the Bowen Island Municipality (BIM) under section 905 of the *Local Government Act* and has granted to BIM a Covenant under section 219 of the *Land Title Act* relating to certain restrictions on the use of the Land (collectively, the "Housing Agreement");
- C. The purpose of the Housing Agreement and this Agreement is to ensure that the Land is used solely for the provision of affordable housing for Residents or Retirees (hereinafter defined);
- D. Pursuant to the terms of the Housing Agreement the Owner has or will agree to build or maintain Resident Units (hereinafter defined) on the Land; and
- E. In order to ensure that the Resident Units are occupied and disposed of in accordance with the Housing Agreement the Owner agrees to grant to BIM a right of first refusal to purchase and an option to purchase the Resident Units on the terms and conditions set out in this Agreement,

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

PART I – DEFINITIONS

1. In this Agreement the following words have the following meanings:
 - a. "Agreement" means these standard charge terms together with the General Instrument (hereinafter defined);
 - b. "Assessed Value" means the most recent assessed value of the real property as determined by the assessment authority in which the real property is situated. If such value is not available, then the Assessed Value means the highest price in terms of money that the real property will fetch under all conditions requisite to a fair sale with the buyer and seller each acting prudently, knowledgeably and assuming the price is not effected by undue stimulus as estimated by a real estate appraiser accredited in the jurisdiction in which the real property is located;
 - c. "Bona Fide Offer" means an offer to purchase the Owner's Interest in the Resident Unit:
 - i. in writing;
 - ii. signed by an Outside Offeror (hereinafter defined);
 - iii. in a form legally enforceable against the Outside Offeror and subject to no conditions except for BIM's Subject (as hereinafter defined);
 - iv. providing for a deposit of not less than 5% of the proposed purchase price within 72 hours of the removal or waiver of BIM's Subject;
 - v. for a purchase price that does not exceed the Maximum Resale Price but may be less than the Maximum Resale Price.
 - vi. providing that if BIM does not exercise its right of first refusal as set forth in this Agreement, the Outside Offeror will grant to BIM a right of first refusal and option to purchase the Lands upon the same terms and conditions as are set forth in this Agreement;
 - vii. providing that the Outside Offeror will not assign or transfer the contract for the purchase of the Resident Unit; and
 - viii. confirming that the Outside Offeror has read and understood the terms of this Agreement, the Housing Agreement and all other charges in favour of BIM that are registered in the LTO against the Land and that the Outside Offeror agrees to be bound by the owner's obligations pursuant to such charges;
 - d. "Business Day" means Monday to Friday inclusive except for those excluded days declared by lawful authority as holidays, excluding any day that the LTO is not open for business;
 - e. "CCPI" means the Core Consumer Price Index for Canada, published from time to time by the Bank of Canada, or its successor in function;
 - f. "Change in CCPI" means the percentage change in the monthly CCPI published immediately prior to the date of Previous Sale to the monthly CCPI published immediately prior to the date of contracting for next transfer. Where the CCPI has increased since the date of Previous Sale, the Change in CCPI is positive. Where the CCPI has decreased since the date of Previous Sale, the Change in CCPI is negative.

- g. "Dispose" means to transfer by any method, and includes assign, give, sell, grant, charge, convey, bequeath, devise, lease, rent or sublet, divest, release, and agree to do any of those things;
- h. "Dwelling Units" means all residential dwelling units located or to be located on the Land whether those dwelling units are lots, strata lots or parcels, or parts or portions thereof, into which ownership or right of possession or occupation of the Land may be Subdivided;
- i. "Efforts to Sell" means the best efforts of the Owner to sell the Resident Unit using all reasonable means including, listing the Resident Unit for sale with a licensed real estate agent, advertising the Resident Unit for sale in the local newspapers, posting "for sale" signs on any bulletin boards maintained by BIM for sale of such units, and offering to sell the Resident Unit to BIM on the following terms:
 - i. specifying in a written notice that it is offering to sell the Resident Unit to BIM in accordance with section 6 or 7 of this Agreement;
 - ii. giving BIM the exclusive right for 15 Business Days from the date on which BIM receives the notice from the Owner pursuant to section 6 or 7 of this Agreement, to give a written notice to the Owner agreeing to purchase the Resident Unit for the purchase price which does not exceed the Maximum Price, and on the terms that are set out in section 5.b. to 5.g. of this Agreement.
- j. "First Purchaser" means the person to whom the Interest in a Resident Unit is first transferred after issuance of the occupancy permit for the Resident Unit by BIM;
- k. "General Instrument" means the Form C under the Land Title (Transfer Forms) Regulations, as amended, and all schedules and addenda to the Form C charging the Land and citing these Standard Charge Terms;
- l. "Gross Floor Area" means the habitable gross floor area of each Resident Unit and includes enclosed sunrooms but does not include crawl spaces, open patios, open balconies or parking spaces. If the Resident Unit is a strata lot as defined by the Strata Property Act, the gross floor area measurements will be based on the gross floor area shown corresponding to the Resident Unit on the Strata Plan filed in the LTO (hereinafter defined) in respect of the Land. If the Resident Unit is not a strata lot as defined by the Strata Property Act, the gross floor area measurements will be made in accordance with the procedure for determining gross floor area set out in the Strata Property Act as if the Resident Unit were a strata lot;
- m. "Interest" means the property interest of the Owner in the Resident Unit.
- n. "Land" means the land described in Item 2 of the General Instrument and any part into which said Land is Subdivided (hereinafter defined);
- o. "Lender" means a mortgagee that is a bank or other financial institution established or regulated under any enactment of British Columbia or Canada, or a receiver or receiver-manager acting on behalf of such mortgagee.
- p. "LTO" means the New Westminster/Vancouver Land Title Office or its successor.
- q. "Maximum Price, First Sale" means the sale price for the sale of the Resident Unit to the First

Purchaser determined by multiplying the Gross Floor Area of the Resident Unit by the dollar amount set out in the schedule to the Form C. In addition to the Maximum Price, First Sale, the Owner that sells the Resident Unit to the First Purchaser will be entitled to charge the First Purchaser the net GST payable by the First Purchaser and the fee paid by the Owner to obtain the home warranty insurance required by the *Home Protection Act*.

r. "Maximum Price, Resale" means the Previous Sale Price plus the Previous Sale Price multiplied by the Change in CCPI. Where the Change in CCPI is negative or cannot be determined, the Maximum Price, Resale shall be the Previous Sale Price.

s. "BIM's Subject" mean the following clauses:

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

i. the seller notifying the buyer in writing not later than _____ that the Bowen Island Municipality (BIM) has approved the terms of the sale of the Land to the buyer and that BIM has decided not to exercise its option to purchase the Land with respect to this transaction only; and

ii. the seller notifying the buyer in writing not later than _____ that BIM has confirmed the buyer's eligibility to own the Land.

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

t. "Outside Offeror" means a purchaser or prospective purchaser of the Resident Unit who deals at arm's-length with the vendor of the Resident Unit;

u. "Owner" means the Transferor described in the General Instrument and any subsequent owner of the Land or of any part into which the Land is Subdivided, and includes any person who is a registered owner in fee simple of a Resident Unit from time to time;

v. "Permanent Employee" means an individual who can demonstrate to the satisfaction of the Bowen Island Housing Corporation that he or she has secured full time permanent employment for more than one year with a business that operates on Bowen Island;

w. "Previous Sale" means the last transfer of the Resident Unit.

x. "Previous Sale Price" means the sale price of the Previous Sale.

z. "Qualified Person" means a Resident, Permanent Employee or Retiree who does not own, either directly or indirectly through a trust, business asset, or otherwise, any interest in real property anywhere in the world, for at least five years prior to the time that such person applies to be on the waitlist for a Resident Unit until such person completes the purchase of a Resident Unit.

aa. "Resident" means an individual who can demonstrate to the satisfaction of the Bowen Island

Housing Corporation that their current permanent residence has been in the Bowen Island Municipality for a minimum of one year;

- bb. "Resident Unit" means a Dwelling Unit designated as a Resident unit in accordance with the Housing Agreement to be used, occupied and Disposed of in accordance with the Housing Agreement;
- cc. "Retiree" means an individual who has ceased employment and who was a Resident for 5 of the 6 years within the boundaries of the Bowen Island Municipality immediately preceding the date on which the individual ceased employment;
- dd. "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*;
- ee. "Subsequent Purchaser" means a person who purchases the Resident Unit from the First Purchaser or from someone who owned the Resident Unit after the First Purchaser.
- ff. "Waitlist Process" means the process established by the Housing Corporation to transfer ownership of Resident Units to Qualified Persons.

PART II - GENERAL

- 2. The Owner covenants and agrees that the Owner will not Dispose of its Interest in any Resident Unit unless such Interest is Disposed of in accordance with this RFR Agreement, the Standard Housing Agreement, and the Waitlist Process of the Bowen Island Housing Corporation or its successor which Waitlist Process shall be approved by the BIM Council. The Owner will not Dispose of its Interest in any Resident Unit other than to BIM or to a purchaser selected through the Waitlist Process.
- 3. Provided that the Owner is not in breach of any of its obligations under this Agreement or under the Housing Agreement, at the request of the Owner and at the Owner's sole expense, BIM will deliver to the Owner discharges of this Agreement in registrable form for each Dwelling Unit that:
 - a. is a separate legal parcel; and is not a Resident Unit; and
 - b. is not a Resident Unit.

PART III - RIGHT OF FIRST REFUSAL

- 4. The Owner covenants and agrees as follows:

- a. The Owner will not sell or offer to sell any Resident Unit for any consideration not consisting entirely of lawful money of Canada, and only to a Qualified Person through the Waitlist Process of the Bowen Island Housing Corporation or its successor;
- b. If the Owner receives a Bona Fide Offer to purchase any Resident Unit which the Owner is willing to accept, then the Owner will offer to sell the Resident Unit to BIM on the terms that are set out in section 5 of this Agreement, by giving to BIM a notice in writing (the "Notice") attached to a copy of the Bona Fide Offer. BIM will have the exclusive right for 15 Business Days (the "Election Period") from the date on which BIM receives from the Owner the Notice and a copy of the Bona Fide Offer within which to purchase the Resident Unit on the terms set out in section 5 of this Agreement. The Owner agrees that BIM's Election Period to purchase the Resident Unit will not start to run until the Owner gives to BIM notice of the Bona Fide Offer with the only condition precedent or subject in the Bona Fide Offer being BIM's Subject;
- c. If BIM wishes to exercise this right of first refusal, BIM will give the Owner written notice of such exercise on or before the end of the Election Period. If BIM exercises this right of first refusal, BIM shall have the right to assign the Bona Fide Offer to a third party designee of its choice;
- d. If BIM does not exercise this right of first refusal with respect to a specific Bona Fide Offer, BIM's rights under this right of first refusal with respect to the particular Bona Fide Offer will be waived, but only if the terms of sale between the Outside Offeror and the Owner are in strict compliance with the terms stated in the Bona Fide Offer, and if the Owner complies with the following requirements:
 - i. the Owner delivers to BIM, within 5 business days after the expiry of the Election Period written proof, satisfactory to BIM, in its sole discretion, that the purchaser is an Outside Offeror, and that the Outside Offeror agrees to be bound by all the agreements in favour of BIM which affect the Resident Unit;
 - ii. the Owner does not remove the second part of BIM's Subject until such time as BIM informs the Owner that it is satisfied with the information provided pursuant to subsection i herein;
 - iii. at least 5 Business Days before completion of the sale pursuant to the Bona Fide Offer the Owner delivers to BIM the following:
 - (1) written proof, satisfactory to BIM, in its sole discretion, that the purchase price payable under the Bona Fide Offer does not exceed the Maximum Price;
 - (2) signed Form C granting to BIM an option to purchase and a right of first refusal to purchase the Resident Unit (the "New Form C") on substantially the same terms as set out in this Agreement, with such amendments as BIM may reasonably require;
 - (3) a discharge of this Agreement (the "Discharge") for execution by BIM;
 - (4) undertakings from the solicitor or notary for the Outside Offeror (the "Legal Representative") on terms satisfactory to BIM, including that:

- (a) the Legal Representative will only register the Discharge if it is done concurrently with the registration of the New Form C;
 - (b) the Legal Representative will ensure that the New Form C is registered against the Resident Unit in priority to all mortgages and other financial liens, charges and encumbrances, except for any charges in favour of BIM;
 - (c) forthwith after registration of the New Form C, provide to BIM copies of the Discharge and the New Form C with registration particulars endorsed thereon, and a copy of the State of Title Certificate for the Land confirming registration of the New Form C; and
- (5) a copy of the vendor's statement of adjustments for the Resident Unit certified to be true by the Legal Representative; and
- iv. upon request by BIM, the Owner delivers to BIM such further evidence as BIM may reasonably require to confirm the purchase price of the Resident Unit, and to confirm that the Outside Offeror has granted to BIM an option to purchase and a right of first refusal to purchase the Resident Unit.

PART IV - GRANT OF OPTION

- 5. The Owner hereby grants to BIM the sole and exclusive irrevocable option to purchase the Resident Units (the "Option") effective immediately upon breach of any of the Owner's obligations contained in the Housing Agreement, or this Agreement, or upon the Owner advising BIM in writing of its intention to transfer or sell the Resident Unit. The Option will be exercised by or on behalf of BIM by a written notice delivered to the Owner in accordance with the following terms:
 - a. Subject to adjustments as provided in this Agreement and subject to sections 6 and 7 of this Agreement, for the purchase price (the "Purchase Price") that is the lesser of:
 - i. the purchase price set out in the Bona Fide Offer (if any); and
 - ii. the Maximum Price, Resale.
 - b. The purchase of the Resident Unit by BIM will be completed on the date ("Completion Date") to be chosen by BIM, acting reasonably, such date not to be later than thirty Business Days after BIM gives to the Owner its notice of intention to exercise the Option.
 - c. On the Completion Date, the Owner will convey the Resident Unit to BIM, or BIM's designee, free and clear of all mortgages and other financial liens, charges and encumbrances, provided that the Owner is entitled to use the Purchase Price to discharge any mortgage registered against title to the Resident Unit, in accordance with section 5.g.vii.
 - d. The Owner will give vacant possession of the Resident Unit to BIM, subject only to existing tenancies in favour of qualified Persons or Seasonal Residents, following payment of the adjusted Purchase Price to the Owner on the Completion Date.
 - e. All adjustments, both incoming and outgoing, in connection with the purchase and sale of the Resident Unit, including adjustments of taxes, rates, rents and other matters usually the subject of

adjustment between vendor and purchaser, as well as adjustments for any amounts payable by the Owner to BIM pursuant to the terms of this Agreement or the Housing Agreement, will be made as at the Completion Date.

- f. The Owner covenants and agrees that it will, from and after the date of the application to register this Agreement in the LTO, take or cause to be taken all proper steps and actions and corporate proceedings to enable the Owner to vest a good and marketable title to the Resident Unit in BIM, or BIM's designee, at the Completion Date, free and clear of all liens, encumbrances, defects in title, equities or claims of every nature and kind except for Permitted Encumbrances (if any, as described in the General Instrument) and to enable the Owner to carry out the sale of the Resident Unit and to execute and deliver this Agreement as valid and binding obligations of the Owner.
- g. The Owner hereby represents and warrants to, and covenants and agrees with BIM as at the Completion Date that:
 - i. the Owner has no indebtedness or obligation to any person which might now or in future constitute a lien, charge or encumbrance on the Resident Unit;
 - ii. the Owner has not used the Resident Unit or permitted any use of the Resident Unit, to store, manufacture, dispose of, emit, spill, leak, generate, transport, produce, process, release, discharge, landfill, treat or remediate any explosive, radioactive material, asbestos, urea formaldehyde, chlorobiphenyl, hydrocarbon, underground tank, pollution, contamination, hazardous substance, corrosive substance, toxic substance, special waste, waste, or matter of any kind which is or may be harmful to human safety or health or to the environment, including anything the storage, manufacture, disposal, emission, discharge, treatment, generation, use, transport, remediation or release into the environment of which is now or at any time after the execution of this Agreement is prohibited, controlled, regulated or licensed under any laws applicable to the Resident Unit ("Contaminant");
 - iii. the Owner has not caused or permitted, the storage, manufacture, disposal, emission, spilling, leakage, treatment, generation, transportation, production, processing, release, discharge, landfilling, treatment or remediation of any Contaminant in, on, under or from the Resident Unit;
 - iv. the Owner has at all times used the Resident Unit in compliance with all laws relating to Contaminants and to the environment;
 - v. the Owner will indemnify and save harmless BIM, and its elected and appointed officials, officers, Residents and agents, from and against any and all actions, causes of action, liabilities, demands, losses, damages, costs (including remediation costs and costs of compliance with any law, and legal fees and disbursements), expenses, fines and penalties, suffered or incurred by BIM by reason of a breach of any representation or warranty, covenant or agreement of the Owner set forth in this Agreement. This obligation will survive the termination of this Agreement;
 - vi. not less than 5 days before the Completion Date, BIM will deliver to the Owner's solicitors:

- (1) two copies of a Form A Transfer transferring the fee simple title to the Resident Unit to BIM, or BIM's designee, ("Transfer") subject only to Permitted Encumbrances,
 - (2) two copies of the Owner's Statement of Adjustments to be approved and executed by the Owner, and
 - (3) a statutory declaration of the Owner that the Owner is a resident of Canada within the meaning of the *Income Tax Act* (Canada);
- vii. on or before the Completion Date, the Owner will deliver to BIM's solicitors or notaries, in trust, the Transfer executed on behalf of the Owner, in registrable form, on the undertakings that:
- (1) on the Completion Date, BIM will apply to register the Transfer in the LTO only if the adjusted Purchase Price (less any proceeds of a new mortgage to be granted by BIM, or BIM's designee) has first been deposited in the trust account of BIM's, or BIM's designee's, solicitors; and
 - (2) after application has been made to register the Transfer in the LTO, and upon receipt of a satisfactory post-index search of the title to the Resident Unit indicating that in the normal course of LTO procedure BIM, or its designee, will become the registered owner of the Resident Unit free and clear of all mortgages and other financial liens, charges and encumbrances, other than any mortgage to be discharged as provided herein, BIM will at once pay, or cause its designee to pay, the Owner's solicitor or notary public the adjusted Purchase Price by solicitor's trust cheque made available for pick up by the Owner's solicitor or notary public, on the undertaking of the Owner's solicitor or notary public to discharge any mortgage or other financial charge from title to the Resident Unit forthwith following completion;
- viii. the Resident Unit will be at the Owner's risk until the Completion Date and will thereafter be at the risk of BIM. In the event of loss or damage to the Resident Unit occurring before the completion of the closing on the Completion Date by reason of fire, tempest, lightning, earthquake, flood or other acts of God, explosion, riot, civil commotion, insurrection or war, BIM, at BIM's option, may cancel this Agreement;
- ix. BIM, its agents and Residents, have the licence, conditional on providing 48 hours prior written notice to the Owner, to enter upon the Resident Unit from time to time prior to the Completion Date, at BIM's sole risk and expense, for the purpose of making reasonable inspections, surveys, tests and studies of the Resident Unit; and
- x. BIM will pay or cause its designee to pay:
- (1) any property transfer tax payable by it under the *Property Transfer Tax Act* (British Columbia),
 - (2) LTO registration fees in connection with the transfer of the Resident Unit to BIM, or BIM's designee,
 - (3) BIM's legal fees and disbursements but not the Owner's, and

- (4) all goods and services tax, if any, payable in respect of transfer of the Resident Unit to BIM, or BIM's designee, under the *Excise Tax Act* (Canada).

PART V - EXCEPTIONS TO RIGHT OF FIRST REFUSAL AND OPTION

6. Notwithstanding any other provision in this Agreement, if the Owner is a Lender and the Lender has for between 90 days and 119 days made Efforts to Sell, and if the Lender has been unable to enter into a Bona Fide Offer or to sell the Resident Unit to BIM, the Lender may after that time sell the Interest to a purchaser who is not a Resident or Retiree, but the purchase price for the Interest must not exceed the Maximum Price and the Resident Unit may only be used, occupied, re-sold or leased by that new owner in accordance with the Housing Agreement and this Agreement.
7. Notwithstanding any other provision in this Agreement, if the Owner is a Lender and the Lender has for at least 120 days made Efforts to Sell, and if the Lender has been unable to enter into a Bona Fide Offer or sell the Resident Unit to BIM, the Lender may after that time sell the Interest to a purchaser who is not a Resident or Retiree for any price, and the Resident Unit may be used and occupied subject only to all enactments applicable to the use of the Resident Unit but the Housing Agreement and this Agreement will not apply.

PART VI - INTERPRETATION

8. In this Agreement:

- a. reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;
- b. article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;
- c. if a word or expression is defined in this agreement, other parts of speech and grammatical forms of the same word or expression have corresponding meanings;
- d. reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;
- e. reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided;
- f. the provisions of s. 25 of the *Interpretation Act* with respect to the calculation of time apply;
- g. time is of the essence;
- h. all provisions are to be interpreted as always speaking;

- i. reference to a "party" is a reference to a party to this agreement and to that party's respective successors, assigns, trustees, administrators and receivers. Wherever the context so requires, reference to a "party" also includes Residents, agents, officers and invitees of the party;
- j. reference to a "day", "month", "quarter" or "year" is a reference to a calendar day, calendar month, calendar quarter or calendar year, as the case may be, unless otherwise expressly provided; and
- k. where the word "including" is followed by a list, the contents of the list are not intended to circumscribe the generality of the expression preceding the word "including".

PART 1X - MISCELLANEOUS

- 9. **BIM not Obligated to Exercise Right of First Refusal or Option.** The Owner acknowledges and agrees that BIM is under no obligation to exercise its Option or the RFR.
- 10. **Duration of Option and Right Of First Refusal .** The option to purchase hereby granted and the right of first right of refusal granted by this Agreement are effective until the date that is 80 years less a day after the date on which Form C referring to this Agreement is deposited for registration in the LTO.
- 11. **Modification.** This Agreement may be modified or amended from time to time, by bylaw duly passed by the Council of BIM, if it is signed by BIM and the person who is the current registered owner of the Land. BIM may, in its absolute and unfettered 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 BIM considers desirable.
- 12. **Assignability.** The Owner will not assign its interest under this Agreement without the prior written consent of BIM, which consent BIM may arbitrarily withhold. BIM may assign any of its rights or interests under this Agreement to a company owned by it or to a Resident or Retiree, and upon such assignment BIM will have no further obligations under this Agreement with respect to the rights or interests assigned by BIM
- 13. **Municipalities Powers Unaffected.** This Agreement does not:
 - a. affect or limit the discretion, rights, duties or powers of BIM under any enactment or at common law, including in relation to the use or subdivision of the Land;
 - b. impose on BIM any legal duty or obligation, including any duty of care or contractual or other legal duty or obligation, to enforce this Agreement;
 - c. affect or limit any enactment relating to the use or subdivision of the Land; or
 - d. relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Land.
- 14. **Agreement for Benefit of BIM only.** The Owner and BIM agree that:
 - a. this agreement is entered into only for the benefit of BIM;
 - b. this agreement is not intended to protect the interests of the Owner, any tenant, or any future owner, lessee, occupier or user of the Property, the Land or the building or any portion thereof, including any

Resident unit;

- c. BIM may at any time execute a release and discharge of this agreement, without liability to anyone for doing so, and without obtaining the consent of the Owner.
15. **No Public Law Duty.** Where BIM is required or permitted by this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination or give its consent, the Owner agrees that BIM is under no public law duty of fairness or natural justice in that regard and agrees that BIM may do any of those things in the same manner as if it were a private party and not a public body.
16. **Liability.** Except to the extent caused by the negligence of BIM or any other person for whose negligence BIM is responsible in law, the Owner agrees to and does hereby indemnify and save harmless BIM, its officers, servants, agents and their heirs, personal representatives, successors and assigns against all loss, damage, costs and liabilities which they will or may be liable for or suffer in connection with the Land. The obligations of the Owner as set out in this section survive termination of this Agreement.
17. **Costs.** Unless otherwise specified in this Agreement, the Owner will comply with all the requirements of this Agreement at its own cost and expense and will pay to BIM, on request, all reasonable costs or expenses it incurs in connection with this Agreement.
18. **Notice.** Any notice required to be served or given to a party herein pursuant to this Agreement will be sufficiently served or given if delivered, to the postal address of Owner set out in the records of the LTO, and in the case of BIM addressed:
- To: Clerk, Bowen Island Municipality,
Bowen Island, BC V0N 1G0
- And to: Bowen Island Housing Corporation,
Bowen Island, BC V0N 1G0
- or to the most recent postal address provided in a written notice given each of the parties to the other. Any notice which is delivered is to be considered to have been given on the first day after it is dispatched for delivery.
19. **Enuring Effect.** This Agreement will extend to and be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.
20. **Severability.** If any provision of this Agreement is found to be invalid or unenforceable such provision or any part thereof will be severed from this Agreement and the resultant remainder of this Agreement will remain in full force and effect.
21. **Waiver.** All remedies of BIM will be cumulative and may be exercised by BIM in any order or concurrently in case of any breach and each remedy may be exercised any number of times with respect to each breach. Waiver of or delay in BIM exercising any or all remedies will not prevent the later exercise of any remedy for the same breach or any similar or different breach.
22. **Sole Agreement.** This Agreement, and any documents signed by the Owners contemplated by this Agreement, represent the whole agreement between BIM and the Owner respecting the use and

occupation of the Resident Units, and there are no warranties, representations, conditions or collateral agreements made by BIM except as set forth in this Agreement.

23. **Further Assurance.** Upon request by BIM the Owner will forthwith do such acts and execute such documents as may be reasonably necessary in the opinion of BIM to give effect to this Agreement.
24. **Covenant Runs with the Land.** This Agreement burdens and runs with the Land and every parcel into which it is consolidated or Subdivided by any means, including by subdivision under the *Land Title Act* (British Columbia) or by strata plan under the *Strata Property Act* (British Columbia). All of the covenants and agreements contained in this Agreement are made by the Owner for itself, its personal administrators, successors and assigns, and all persons who after the date of this Agreement, acquire an interest in the Land.
25. **Limitation on Owner's Obligations.** The Owner is only liable for breaches of this Agreement that occur while the Owner is the registered owner of the Land.
26. **Equitable Remedies.** The Owner acknowledges and agrees that damages would be an inadequate remedy for BIM for breach of this Agreement or the RFR and that the public interest strongly favours specific performance, injunctive relief (mandatory or otherwise), or other equitable relief, as the only adequate remedy for a default under this Agreement or the RFR.
27. **No Joint Venture.** Nothing in this Agreement will constitute the Owner as the agent, joint venturer, or partner of BIM or give the Owner any authority to bind BIM in any way.
28. **Applicable Law.** Unless the context otherwise requires, the laws of British Columbia will apply to this Agreement and all statutes referred to herein are enactments of the Province of British Columbia. Without limiting the above, in the event of any conflict between any provision of this Agreement and the Residential Tenancy Act, this Agreement is without effect to the extent of the conflict.
29. **Deed and Contract.** By executing and delivering this Agreement the Owner intends to create both a contract and a deed executed and delivered under seal.

Schedule "A"
Sample Calculations for Maximum Price, Resale.

Example 1.

A first resale

Maximum Price, First Sale \$200,000.00

Change in CCPI =

$$\frac{\text{CCPI at date of contract for resale } 113.4 - \text{CCPI at Previous Sale (first sale in this example) } 112.3}{112.3} \times 100 = .98\%$$

Maximum Price, Resale = \$200,000 plus (\$200,000 x .0098 = \$1,960) = \$201,960.00

Example 2

A fourth resale.

Previous Sale Price (from third sale) \$213,647.00

Change in CCPI =

$$\frac{\text{CCPI at date of contract for sale } 116.1 - \text{CCPI at Previous Sale (third sale in this example) } 115.2}{115.2} \times 100 = .78\%$$

Maximum Price, Resale = \$213,647 plus (\$213,647 x .0078 = \$1,666.45) = \$215,313.45

Example 3

A resale where CCPI has declined

Previous Sale Price \$213,647.00

Change in CCPI

$$\frac{\text{CCPI at date of contract for sale } 113.9 - \text{CCPI at Previous Sale } 114.2}{114.2} \times 100 = \text{negative } .26\%$$

Maximum Price, Resale = Previous Sale Price of \$213,647.00 (because percentage change is negative)

END OF SET

STANDARD CHARGE TERMS

FILED BY: BOWEN ISLAND MUNICIPALITY (Bowen Island Housing Corporation)

**STANDARD HOUSING AGREEMENT
219 COVENANT AND RENT CHARGE AND INDEMNITY**

The following standard charge terms will be incorporated by reference in every Section 219 covenant and housing agreement in which the set is referred to by its filing number as provided by Section 235 of the *Land Title Act*.

WHEREAS:

- A. The Bowen Island Housing Corporation (BIHC) is a wholly owned subsidiary of the Bowen Island Municipality (BIM)
- B. The Bowen Island Housing Corporation acts on behalf of BIM in all matters relating to restricted affordable housing and all Resident Units (hereinafter defined);
- C. Section 219 of the Land Title Act permits the registration of a covenant of a negative or positive nature in favour of the Bowen Island Municipality (BIM) in respect of the use of land or construction on land;
- D. The Owner (hereinafter defined) is the registered owner of the Land (hereinafter defined);
- E. The Owner and BIM wish to enter into this Agreement to provide for restricted affordable housing on the terms and conditions set out in this Agreement, and this Agreement is both a covenant under section 219 of the *Land Title Act* and a housing agreement under s.905 of the *Local Government Act*.

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

PART I – DEFINITIONS

- 1. In this Agreement the following words have the following meanings:
 - a. "Agreement" means these standard charge terms together with the General Instrument (hereinafter defined);
 - b. "Assessed Value" means the most recent assessed value of the real property as determined by the assessment authority in which the real property is situated. If such value is not available, then the Assessed Value means the highest price in terms of money that the real property will fetch under all conditions requisite to a fair sale with the buyer and seller each acting prudently, knowledgeably and assuming the price is not effected by undue stimulus as estimated by a real estate appraiser accredited in the jurisdiction in which the real property is located;
 - c. "CCPI" means the Core Consumer Price Index for Canada published from time to time by the Bank of Canada, or its successor in function;

- d. "Daily Amount" means \$500.00 per day as of December 31, 2007 adjusted thereafter by an amount determined by multiplying \$500.00 by the percentage change in the CCPI since December 31, 2007 to January 1 of the year that a written notice is delivered to the owner by the Bowen Island Housing Corporation pursuant to section 26 herein;
- e. "Dispose" means to transfer by any method, and includes assign, give, sell, grant, charge, convey, bequeath, devise, lease, rent or sublet, divest, release, and agree to do any of those things;
- f. "Dwelling Units" means all residential dwelling units located or to be located on the Land whether those dwelling units are lots, strata lots or parcels, or parts or portions thereof, into which ownership or right of possession or occupation of the Land may be Subdivided (hereinafter defined);
- g. "General Instrument" means the Form C under the Land Title (Transfer Forms) Regulations, as amended, and all schedules and addenda to the Form C charging the Land and citing these Standard Charge Terms;
- h. "Gross Floor Area" means the habitable gross floor area of each Resident Unit and includes enclosed sunrooms but does not include crawl spaces, open patios, open balconies or parking spaces. If the Resident Unit is a strata lot as defined by the *Strata Property Act*, the gross floor area measurements will be based on the gross floor area shown corresponding to the Resident Unit on the Strata Plan filed in the LTO (hereinafter defined) in respect of the Land. If the Resident Unit is not a strata lot as defined by the *Strata Property Act*, the gross floor area measurements will be made in accordance with the procedure for determining gross floor area set out in the *Strata Property Act* as if the Resident Unit were a strata lot;
- i. "Interest" means the property interest of the Owner in a Resident Unit;
- j. "Land" means the land described in Item 2 of the General Instrument and any part into which said land is Subdivided;
- k. "LTO" means the New Westminster Land Title Office or its successor;
- l. "Occupancy Permit Year" means the calendar year in which BIM issues an occupancy permit for a Resident Unit;
- m. "Original Rent" means the dollar amount per square foot per month set in out in the Schedule to the Form C;
- n. "Owner" means the Transferor described in the General Instrument and any subsequent owner of the Land or of any part into which the Land is Subdivided, who must be a Qualified Person, and includes any person who is a registered owner in fee simple of a Resident Unit from time to time;
- o. "Qualified Person" means a Resident, Permanent Employee or Retiree who does not own, either directly or indirectly through a trust, business asset, or otherwise, any interest in real property anywhere in the world, for at least five years prior to the time that such person applies to be on the waitlist for a Resident Unit until such person completes the purchase of a Resident Unit.
- p. "Permanent Employee" means an individual who can demonstrate to the satisfaction of the Bowen Island Housing Corporation that he or she has secured full time permanent employment for more than one year

with a business that operates on Bowen Island;

- q. "Permanent Residence" means a Resident Unit occupied exclusively for residential purposes as a permanent domicile by one or more persons in accordance with Part III, unless other uses are expressly permitted within the Bowen Island Municipality Zoning By-law.
- r. "Resident" means an individual who can demonstrate to the satisfaction of the Bowen Island Housing Corporation that their current permanent residence has been in the Bowen Island Municipality for a minimum of one year;
- s. "Resident Unit" means a Dwelling Unit designated as a Resident Unit in accordance with Part II herein to be used, occupied and Disposed of in accordance with this Agreement;
- t. "Retiree" means an individual who has ceased employment and who was a Resident for 5 of the 6 years within the boundaries of the Bowen Island Municipality immediately preceding the date on which the individual ceased employment;
- u. "RFR" means a right of first refusal and option to purchase the Land granted or to be granted by the Owner to BIM;
- v. "Seasonal Resident" means an individual who can demonstrate to the satisfaction of the Bowen Island Housing Corporation that he or she has secured employment for up to six months with a business that holds a valid business license with the Bowen Island Municipality;
- w. "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*;
- x. "Tenancy Agreement" means a tenancy agreement, lease, license or other agreement granting rights to occupy a Resident Unit;
- y. "Tenant" means an occupant of a Resident Unit by way of a Tenancy Agreement.

PART II - USE OF LAND AND CONSTRUCTION OF RESIDENT UNITS

- 2. The Owner covenants and agrees with BIM that:
 - a. the Land will not be developed and no building or structure will be constructed on the Land unless:
 - i. as part of the construction and development of any such building or structure, the Owner also designs and constructs to completion, in accordance with a building permit issued by BIM and in accordance with any development permit issued by BIM, at least the number of Resident Units on the Land specified in the General Instrument; and

- ii. if required by BIM in its sole discretion, an RFR is fully registered against title to the Land in the LTO, with priority as set out in section 2(e) herein;
 - b. the number of Dwelling Units on the Land will not exceed the number of Dwelling Units specified in the General Instrument;
 - c. the Owner will meet or exceed the construction standards for Resident Units as specified by BIM in a development permit issued by BIM in respect of development on the Land;
 - d. the Owner will at all times ensure that the Land is used and occupied in compliance with all statutes, laws, regulations, and orders of any authority having jurisdiction and without limiting the generality of the foregoing all bylaws of BIM and all federal, provincial, municipal or local laws, statutes or ordinances relating to environmental matters, including all rules, regulations, policies, guidelines, criteria or the like promulgated under or pursuant to any such laws; and
 - e. the Owner will do everything necessary, at the Owner's expense, to ensure that this Agreement and an RFR, if required, will be registered against title to the Land in priority to all charges and encumbrances which may have been registered or are pending registration against title to the Land save and except those specifically approved in writing by BIM or in favour of BIM.
3. If not all the Dwelling Units on the Land are to be used as Resident Units the owner will not apply for a discharge of this Agreement pursuant to section 6 in respect of any Dwelling Unit, and BIM will be under no obligation to provide such discharge, unless at the time that the Owner applies for the discharge the Owner is not in breach of any of its obligations under this Agreement and there are [insert the number of Resident Units stipulated in the General Instrument] other Dwelling Units on the Land which:
- a. are designated as Resident Units pursuant to section 4 and for which occupancy permits have been issued by BIM and which are and always have been used, occupied and Disposed of in compliance with this Agreement;
 - b. are not designated as Resident Units but the location of which has been approved in writing by BIM for use as Resident Units and for which occupancy permits have been issued by BIM and which are not and have never been Disposed of, used or occupied; or
 - c. are otherwise acceptable to BIM in its sole discretion upon conditions BIM considers necessary in its sole discretion, to ensure that the Owner fully complies with its obligations under this Agreement.

For greater certainty, any combination of Dwelling Units referred to in a, b and c will suffice to meet the requirements of this section 3, provided that the total of the combination of Dwelling Units referred to in a, b and c is equal to or greater than the number of Resident Units specified in the General Instrument;

4. All applications for Resident Unit designations must be made by the Owner by written notice delivered to BIM and are irrevocable by the Owner upon receipt by BIM of the written notice, but no designation is effective unless and until BIM confirms in writing that the location and the size of the Dwelling Unit is approved by BIM for a Resident Unit, acting reasonably as a local government. If in the sole discretion of BIM the Owner has failed within a reasonable time to make application for Resident Unit designations as required by this Agreement, BIM may in its sole discretion make such designations.

5. Notwithstanding the definition of "Land" in section 1 herein, for the purpose of stipulating the maximum allowable number of Dwelling Units on the Land and for the purpose of stipulating the number of required Resident Units to be constructed on the Land by the Owner pursuant to this Part II and for the purpose of sections 3, 4 and 6 herein, and for the purpose of the definition of Dwelling Unit in section 1, but for no other purposes, "Land" means the entire area of the legal parcel described in Item 2 of the General Instrument as at the date of registration of the General Instrument at the LTO.
6. Subject to section 3, at the request of the Owner and at the Owner's sole expense, BIM will deliver to the Owner discharges of this Agreement in registrable form for each Dwelling Unit that:
 - a. is a separate legal parcel; and
 - b. is not a Resident Unit,

provided that, where the Land is subdivided under the *Strata Property Act*, BIM may withhold delivery of any discharges required to be delivered pursuant to this section until after BIM has received from the strata corporation its duly authorized agreement that it will not take any action that would result in an inability to rent the Resident Units in accordance with this Agreement or would render such rental a breach of the strata corporation bylaws.

PART III - USE AND OCCUPANCY OF RESIDENT UNITS

7. The Owner agrees that each Resident Unit may only be owned and used as a permanent residence occupied by Qualified Persons or Seasonal Residents, and the Owner further agrees that the number of Qualified Persons or Seasonal Residents who permanently reside in the Resident Unit must be equal to or less than the number of Qualified Persons or Seasonal Residents that BIM's building inspector determines can reside in the Resident Unit given the number and size of bedrooms in the Resident Unit and in light of any relevant standards set by BIM in any bylaws of BIM.
8. The Owner will ensure that each Resident Unit is continuously used and occupied as set out in sections 7 and 17. Notwithstanding sections 7 and 17, the owner of the Resident Unit must occupy the unit for six months plus a day out of each calendar year. Those owners who wish to leave for a finite time of more than 12 months over two calendar years will have the opportunity to apply for an exception through the Bowen Island Housing Corporation or its successor.
9. Notwithstanding anything to the contrary contained in this Agreement, if a potential tenant is not a Qualified Person or a Seasonal Resident as herein defined, but has satisfied the Bowen Island Housing Corporation as to the appropriateness of their tenancy in the Resident Unit and received such approval in writing, then the Owner may rent the Resident Unit to such potential tenant provided that the Resident Unit is rented or leased in accordance with all other requirements of this Agreement.
10. Within three days after receiving notice from the Bowen Island Housing Corporation, the Owner will in respect of each Resident Unit, deliver, or cause to be delivered, to the Bowen Island Housing Corporation a statutory declaration, substantially in the form attached as Schedule "A", sworn by the Owner, containing all of the information required to complete the statutory declaration. The Bowen Island Housing Corporation may request such a statutory declaration in respect of the Resident Unit no more than four times in any calendar year. The Owner hereby irrevocably authorizes the Bowen Island Housing Corporation 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, including,

but not limited to the provincial issuing authority for drivers licences, of the request for information from the Bowen Island Housing Corporation to provide such information to the Bowen Island Housing Corporation.

11. If the Owner cannot comply with the occupancy requirements for any Resident Unit for reasons of hardship, the Owner may request that the Bowen Island Housing Corporation alter the Owner's obligations with respect to that Resident Unit on terms acceptable to the Bowen Island Housing Corporation, but no such request may be made later than 30 days after the Bowen Island Housing Corporation has delivered to the owner a notice of breach of this Agreement under Part VII herein. The Owner must deliver the request in writing in accordance with section 37 of this Agreement. The request must set out the circumstances of the hardship involved. The request must set out the reasons why the Owner cannot comply with the occupancy requirements, and must describe the hardship to the Owner that compliance would cause. The Owner agrees that the Bowen Island Housing Corporation is under no obligation to grant any relief, and may proceed with its remedies under this Agreement, and at law and in equity, despite the Owner's request or the hardship involved, and the Owner agrees that the relief, if any, is to be determined by the Bowen Island Housing Corporation in its sole discretion.

PART IV - DISPOSITION AND ACQUISITION OF RESIDENT UNITS

12. In this Part, the following words have the following meanings:
 - a. "First Purchaser" means the person to whom the Interest in a Resident Unit is first transferred after issuance of the occupancy permit for the Resident Unit by BIM;
 - b. "Maximum Price, First Sale" means the sale price for the sale of the Resident Unit to the First Purchaser determined by multiplying the Gross Floor Area of the Resident Unit by the dollar amount set out in the schedule to the Form C. In addition to the Maximum Price, First Sale, the Owner that sells the Resident Unit to the First Purchaser will be entitled to charge the First Purchaser the net GST payable by the First Purchaser and the fee paid by the Owner to obtain the home warranty insurance required by the *Home Protection Act*.
 - c. "Change in CCPI" means the percentage change in the monthly CCPI published immediately prior to the date of Previous Sale to the monthly CCPI published immediately prior to the date of contracting for next transfer. Where the CCPI has increased since the date of Previous Sale, the Change in CCPI is positive. Where the CCPI has decreased since the date of Previous Sale, the Change in CCPI is negative.
 - d. "Previous Sale" means the last transfer of the Resident Unit.
 - e. "Previous Sale Price" means the sale price of the Previous Sale.
 - f. "Maximum Price, Resale" means the Previous Sale Price plus the Previous Sale Price multiplied by the Change in CCPI. Where the Change in CCPI is negative or cannot be determined, the Maximum Price, Resale shall be the Previous Sale Price.
13. The Owner will not Dispose of the Interest in a Resident Unit except in accordance with the terms and conditions set out in this Agreement, the RFR, and the rental and resale guidelines as amended from time to time, of the BIHC as approved by the BIM Council."

14. The Owner will not accept any offer to purchase the Interest in a Resident Unit for a purchase price exceeding the Maximum Price.
15. The Owner will not permit the Interest in a Resident Unit to be disposed of by sublease or assignment of a Tenancy Agreement unless such subletting or assignment is done in compliance with this Agreement.
16. The Owner will give prior written notice of this Agreement to any person to whom it proposes to Dispose of the Interest in a Resident Unit.
17. The Owner must not rent or lease any Resident Unit except to a Qualified Person or Seasonal Resident in accordance with section 7 and except in accordance with the following additional conditions:
 - a. the Resident Unit will be used or occupied only pursuant to a Tenancy Agreement;
 - b. the monthly rent payable for the Resident Unit will not exceed the rent, rounded to the nearest dollar, determined by multiplying the Gross Floor Area by the Original Rent. Subject always to the provisions of the *Residential Tenancy Act* (British Columbia), the Owner may increase the rent payable for the Resident Unit annually, beginning with the first anniversary of the day on which the occupancy permit was issued by BIM for the Resident Unit, and thereafter on each successive anniversary date, by an amount determined by multiplying the rent payable for the Resident Unit at the time of the proposed rent increase by the percentage change in the CCPI since the last anniversary date;
 - c. the Owner will 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. For clarity, this section does not apply to cablevision, telephone, other telecommunications, gas utility or electricity utility fees or charges, parking fees or housekeeping charges;
 - d. the Owner will attach a copy of this Agreement to the Tenancy Agreement;
 - e. the Owner will include in the Tenancy Agreement a clause requiring the Tenant to comply with the use and occupancy restrictions contained in Part III of this Agreement;
 - f. the Owner will include in the Tenancy Agreement a clause entitling the Owner to terminate the Tenancy Agreement in accordance with the *Residential Tenancy Act* if the Tenant uses or occupies, or allows use or occupation of, the Resident Unit in breach of the use or occupancy restrictions contained in this Agreement;
 - g. the Tenancy Agreement will identify all occupants of the Resident Unit, and will stipulate that anyone not identified in the Tenancy Agreement will be prohibited from residing at the Resident Unit for more than 7 consecutive days or more than a total of 15 days in any calendar year;
 - h. the Tenancy Agreement will provide for termination of the Tenancy Agreement by the Owner in situations where the Resident Unit is occupied by more than the number of people BIM's building inspector determines can reside in the Resident Unit given the number and size of bedrooms in the Resident Unit and in light of any relevant standards set by BIM in any bylaws of BIM;

- i. the Tenancy Agreement will provide that the Owner will have the right, at the Owner's option, to terminate the Tenancy Agreement should the Tenant remain absent from the Resident Unit for three consecutive months or longer, notwithstanding the timely payment of rent;
 - j. the Tenancy Agreement will provide that the Tenant will not sublease the Resident Unit or assign the Tenancy Agreement; and
 - k. the Owner will deliver a copy of the Tenancy Agreement to the Bowen Island Housing Corporation upon demand.
18. The Owner will terminate any Tenancy Agreement where the Tenant uses or occupies, or allows use or occupation of a Resident 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).
19. The Bowen Island Housing Corporation 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 Bowen Island Housing Corporation considers desirable.
20. If the Owner is leasing or renting one or more Resident Units, the Owner will, forthwith upon request by the Bowen Island Housing Corporation, identify to the Bowen Island Housing Corporation which Resident Units are vacant and available for occupancy and consider prospective tenants on the Bowen Island Housing Corporation tenancy list.
21. The Owner will be solely responsible for screening Tenants to determine whether or not they qualify to occupy the Resident Unit in accordance with this Agreement notwithstanding that the Resident Unit may be leased or rented to someone from the Bowen Island Housing Corporation's Rental Waitlist. For greater certainty, the Owner agrees that BIM and Bowen Island Housing Corporation are not responsible for, and make no representation to the Owner regarding, the suitability of any prospective tenant on the Bowen Island Housing Corporation Rental Waitlist.
22. Upon notice from the executor of the Owner's estate, the Bowen Island Housing Corporation /Bowen Island Municipality may, at its sole discretion, waive the Right of First Refusal & Option to Purchase and consent to a transfer of the Resident Unit to the children of the deceased Owner, provided that the children of the deceased Owner are of legal age, employed on Bowen Island, and plan to reside in the unit as their permanent residence. If the children of the deceased Owner own market real estate, they must agree to sell the market real estate within 6 months of taking ownership of the Resident Unit.
- A Resident Unit can not be transferred to an Owner's beneficiary under the age of 19. If the Owner's child or children are not yet of legal age, another family member or legal guardian could reside in the Resident Unit with the child or children until the child or children reach legal age.
- Where an executor is holding title to a Resident Unit in trust, not living or intending to live in the Resident Unit with the child or children, and waiting for the Owner's beneficiary of the estate to come of age to inherit for the beneficiary's own use as their permanent residence, the owner occupancy requirements set out in section 8 will be waived until the Owner's beneficiary is 19 years of age, provided the Resident Unit is rented by Qualified Persons or Seasonal Residents at Bowen Island Housing Corporation or its successor's rental rates.
23. If an Owner's child is of legal age, employed on Bowen Island, does not own other real estate and plans to occupy the Resident Unit as a primary residence, the Owner can add the name of the child on to title of the Resident Unit or can transfer the title entirely into the child's name. Title can not be transferred into a trust.

PART V - CAPITAL IMPROVEMENTS

24. If the Owner wishes to make capital improvements to a Resident Unit, these improvements should only be undertaken to the extent that the Owner will benefit from the improvements during his or her occupancy of the Resident Unit. Capital improvements will not result in any increase in Original Rent, Previous Price, Maximum Price, Resale, or Maximum Price, First Sale. For greater certainty, the Bowen Island Housing Corporation will not permit any increase in the sale price or rent for improvements that have been made by the Owner.

PART VI - DEMOLITION OF RESIDENT UNIT

25. The Owner will not demolish a Resident Units unless:
- a. the Owner has obtained the written opinion of a professional engineer or architect who is at arm's length to the Owner that it is no longer reasonable or practical to repair or replace any structural component of the Resident Unit, and the Owner has delivered to BIM a copy of the engineer's or architect's report; or
 - b. the Resident Unit is damaged or destroyed, to the extent of 40% or more of their value above their foundations, as determined by BIM in its sole discretion, acting reasonably, and
 - c. a demolition permit for the Resident Unit has been issued by BIM (unless the Building has, or the Dwelling Units have been destroyed by an accident, act of God, or sudden and unanticipated force) and the Resident Unit has been demolished under that permit.

Following demolition, the Owner will use and occupy the replacement Dwelling Unit in compliance with this Housing Agreement, and sections 2.c., 2.d. and 2.e. herein will apply to the construction of the replacement Dwelling Unit to the same extent and in the same manner as those sections apply to the construction of the original Dwelling Unit, and the Dwelling Unit must be approved by BIM as a Resident Unit in accordance with section 4.

PART VII - DEFAULT AND REMEDIES

26. The Owner acknowledges that BIM requires Resident housing to attract Residents to work for local businesses and that these businesses generate tax and other revenue for BIM and economic growth for the community. The Owner therefore agrees that, in addition to any other remedies available to BIM under this Agreement or at law or equity, if a Resident Unit is used or occupied in breach of this Agreement or rented at a rate in excess of that permitted under this Agreement, the Owner will pay, as a rent charge, the Daily Amount to BIM for each day of the breach of this Agreement. The Daily Amount is increased on January 1 of each year by an amount calculated by multiplying the Daily Amount as of the previous January 1 by the percentage increase in the CCPI between that previous January 1 and the immediately preceding December 31. The Daily Amount is due and payable immediately upon receipt by the Owner of an invoice from BIM for the same.
27. The Owner hereby grants to BIM a rent charge under s. 219 of the *Land Title Act* (British Columbia), and at common law, securing payment by the Owner to BIM of any amount payable by the Owner pursuant to

this Agreement. The Owner agrees that BIM, at its option, may enforce payment of such outstanding amount in a court of competent jurisdiction as a contract debt, by an action for and order for sale, by proceedings for the appointment of a receiver, or in any other method available to BIM in law or in equity.

28. If the Resident Unit is sold for a purchase price exceeding the Maximum Price in contravention of this Agreement, the Owner will pay the excess (the "Excess Amount") to BIM within 30 days after written demand is made by BIM. The amount remaining unpaid after the 30 days will bear interest at 10 percent calculated from the due date until the date paid, compounded annually not in advance. The Owner further acknowledges and agrees that BIM's Excess Amount is fair and reasonable and is not to be construed as a penalty or forfeiture but as liquidated damages.

PART VIII - INTERPRETATION

29. In this Agreement:
- a. reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;
 - b. article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;
 - c. if a word or expression is defined in this Agreement, other parts of speech and grammatical forms of the same word or expression have corresponding meanings;
 - d. reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;
 - e. reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided;
 - f. the provisions of s. 25 of the *Interpretation Act* with respect to the calculation of time apply;
 - g. time is of the essence;
 - h. all provisions are to be interpreted as always speaking;
 - i. reference to a "party" is a reference to a party to this Agreement and to that party's respective successors, assigns, trustees, administrators and receivers. Wherever the context so requires, reference to a "party" also includes Residents, agents, officers and invitees of the party;
 - j. reference to a "day", "month", "quarter" or "year" is a reference to a calendar day, calendar month, calendar quarter or calendar year, as the case may be, unless otherwise expressly provided; and
 - l. where the word "including" is followed by a list, the contents of the list are not intended to circumscribe the generality of the expression preceding the word "including".

PART IX - MISCELLANEOUS

30. **Housing Agreement.** The Owner acknowledges and agrees that this:

- a. Agreement constitutes a covenant under s.219 of the *Land Title Act* and a housing agreement entered into under s.905 of the *Local Government Act* (British Columbia);
 - b. where a Resident Unit is a separate legal parcel BIM may file a notice of housing agreement under s.905 of the *Local Government Act* in the LTO against title to the Resident Unit; and
 - c. where Resident Units are not separate legal parcels, or have not yet been constructed, or where the land has not yet been Subdivided to create the Resident Units, BIM may file a notice of housing agreement under s. 905 of the *Local Government Act* in the LTO against title to the Land.
31. **Modification.** This Agreement may be modified or amended from time to time, by bylaw duly passed by the Council of BIM, if it is signed by BIM and a person who is the current registered owner of the Land.
32. **Management.** The Owner covenants and agrees that it will furnish good and efficient management of the Resident Units and will permit representatives of the Bowen Island Housing Corporation to inspect the Resident Units at any reasonable time, subject to the notice provisions in the *Residential Tenancy Act*. The Owner further covenants and agrees that it will maintain the Resident Units in a satisfactory state of repair and fit for habitation and will comply with all laws, including health and safety standards applicable to the Land. Notwithstanding the forgoing, the Owner acknowledges and agrees that the Bowen Island Housing Corporation, in its absolute discretion, may require the Owner, at the Owner's expense, to hire a person or company with the skill and expertise to manage the Resident Units.
33. **Indemnity.** The Owner will indemnify and save harmless BIM and each of its elected officials, officers, directors, Residents and agents, and their heirs, executors, administrators, personal representatives, successors and assigns, from and against all claims, demands, actions, loss, damage, costs and liabilities, which all or any of them will or may be liable for or suffer or incur or be put to by reason of or arising out of:
- a. any act or omission of the Owner, or its officers, directors, Residents, agents, contractors or other persons for whom at law the Owner is responsible;
 - b. the Owner's ownership, lease, operation, management or financing of the Land or any Resident Unit; or
 - c. any act or omission of BIM or any of its elected officials, board members, officers, directors, Residents, agents or contractors in carrying out or enforcing this Agreement, except where such act or omission constitutes a breach of this Agreement by BIM or by any other person for whom at law BIM is responsible.
34. **Release.** The Owner by this Agreement releases and forever discharges BIM and each of its elected officials, officers, directors, Residents and agents, and its and their heirs, executors, administrators, personal representatives, successors and assigns, from and against all claims, demands, damages, actions, or causes of action by reason of or arising out of advice or direction respecting the ownership, lease, operation or management of the Land or any Resident Unit which has been or at any time after the commencement of this Agreement may be given to the Owner by all or any of them.
35. **Survival.** The obligations of the Owner set out in sections 24, 25, 26, 31 and 32 will survive termination of this Agreement.

36. **Municipalities Powers Unaffected.** This Agreement does not:
- a. affect or limit the discretion, rights, duties or powers of BIM under any enactment or at common law, including in relation to the use or subdivision of the Land;
 - b. impose on BIM any legal duty or obligation, including any duty of care or contractual or other legal duty or obligation, to enforce this Agreement;
 - c. affect or limit any enactment relating to the use or subdivision of the Land; or
 - d. relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Land.
37. **Agreement for Benefit of BIM only.** The Owner and BIM agree that:
- d. this Agreement is entered into only for the benefit of BIM;
 - e. this Agreement is not intended to protect the interests of the Owner, any tenant, or any future owner, lessee, occupier or user of the Property, the Land or the building or any portion thereof, including any Resident unit;
 - f. BIM may at any time execute a release and discharge of this Agreement, without liability to anyone for doing so, and without obtaining the consent of the Owner.
38. **No Public Law Duty.** Where BIM is required or permitted by this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination or give its consent, the Owner agrees that BIM is under no public law duty of fairness or natural justice in that regard and agrees that BIM may do any of those things in the same manner as if it were a private party and not a public body.
39. **Notice.** Any notice required to be served or given to a party herein pursuant to this Agreement will be sufficiently served or given if delivered, to the postal address of Owner set out in the records at the LTO, and in the case of BIM addressed:
- To: Clerk, Bowen Island Municipality,
Bowen Island, BC V0N 1G0
- And to: Bowen Island Housing Corporation,
Bowen Island, BC V0N 1G0
- or to the most recent postal address provided in a written notice given each of the parties to the other. Any notice which is delivered is to be considered to have been given on the first day after it is dispatched for delivery.
40. **Enuring Effect.** This Agreement will extend to and be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.

41. **Severability.** If any provision of this Agreement is found to be invalid or unenforceable such provision or any part thereof will be severed from this Agreement and the resultant remainder of this Agreement will remain in full force and effect.
42. **Waiver.** All remedies of BIM will be cumulative and may be exercised by BIM in any order or concurrently in case of any breach and each remedy may be exercised any number of times with respect to each breach. Waiver of or delay in BIM exercising any or all remedies will not prevent the later exercise of any remedy for the same breach or any similar or different breach.
43. **Sole Agreement.** This Agreement, and any documents signed by the Owners contemplated by this Agreement, represent the whole agreement between BIM and the Owner respecting the use and occupation of the Resident Units, and there are no warranties, representations, conditions or collateral agreements made by BIM except as set forth in this Agreement.
44. **Further Assurance.** Upon request by BIM the Owner will forthwith do such acts and execute such documents as may be reasonably necessary in the opinion of BIM to give effect to this Agreement.
45. **Covenant Runs with the Land.** This Agreement burdens and runs with the Land and every parcel into which it is Subdivided. All of the covenants and agreements contained in this Agreement are made by the Owner for itself, its personal administrators, successors and assigns, and all persons who after the date of this Agreement, acquire an interest in the Land.
46. **Limitation on Owner's Obligations.** The Owner is only liable for breaches of this Agreement that occur while the Owner is the registered owner of the Land.
47. **Equitable Remedies.** The Owner acknowledges and agrees that damages would be an inadequate remedy for BIM for breach of this Agreement or the RFR and that the public interest strongly favours specific performance, injunctive relief (mandatory or otherwise), or other equitable relief, as the only adequate remedy for a default under this Agreement or the RFR.
48. **No Joint Venture.** Nothing in this Agreement will constitute the Owner as the agent, joint venturer, or partner of BIM or give the Owner any authority to bind BIM in any way.
49. **Applicable Law.** Unless the context otherwise requires, the laws of British Columbia will apply to this Agreement and all statutes referred to herein are enactments of the Province of British Columbia. Without limiting the above, in the event of any conflict between any provision of this Agreement and the Residential Tenancy Act, this Agreement is without effect to the extent of the conflict.
50. **Deed and Contract.** By executing and delivering this Agreement the Owner intends to create both a contract and a deed executed and delivered under seal.

SCHEDULE "A"
STATUTORY DECLARATION
CANADA
PROVINCE OF BRITISH COLUMBIA
IN THE MATTER OF A HOUSING AGREEMENT WITH
THE BOWEN ISLAND MUNICIPALITY ("Housing
Agreement")

TO WIT:

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

1. I am the owner of _____ (the "Resident 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 Resident Unit.
3. For the period from _____ to _____ the Resident Unit was occupied only by the Residents and Retirees (as defined in the Housing Agreement) whose names and current addresses and whose employer's names and current addresses appear below:

Names, addresses and phone numbers of Residents and Retirees:
 Names, addresses and phone numbers of Employers:
4. The rent charged each month for the Resident 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 will be payable on the date that is 90 days after the date of this statutory declaration: \$_____.
5. I acknowledge and agree to comply with the Owner's obligations under this Agreement, and other charges in favour of BIM registered in the land title office against the land on which the Resident Unit is situated and confirm that the Owner has complied with the Owner's obligations under these Agreements.
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 made under oath and pursuant to the Canada Evidence Act.

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

SCHEDULE "B"
Sample Calculations for Maximum Price, Resale.

Example 1.

A first resale

Maximum Price, First Sale \$200,000.00

Change in CCPI =

$$\frac{\text{CCPI at date of contract for resale } 113.4 - \text{CCPI at Previous Sale (first sale in this example) } 112.3}{112.3} \times 100 = .98\%$$

Maximum Price, Resale = \$200,000 plus (\$200,000 x .0098 = \$1,960) = \$201,960.00

Example 2

A fourth resale.

Previous Sale Price (from third sale) \$213,647.00

Change in CCPI =

$$\frac{\text{CCPI at date of contract for sale } 116.1 - \text{CCPI at Previous Sale (third sale in this example) } 115.2}{115.2} \times 100 = .78\%$$

Maximum Price, Resale = \$213,647 plus (\$213,647 x .0078 = \$1,666.45) = \$215,313.45

Example 3

A resale where CCPI has declined

Previous Sale Price \$213,647.00

Change in CCPI

$$\frac{\text{CCPI at date of contract for sale } 113.9 - \text{CCPI at Previous Sale } 114.2}{114.2} \times 100 = \text{negative } .26\%$$

Maximum Price, Resale = Previous Sale Price of \$213,647.00 (because percentage change is negative)

END OF SET