

DESIGN BUILD AGREEMENT

Port Coquitlam Community Recreation Complex and Residential Development

Supplemental Terms and Conditions to the CCDC Design-Build
Stipulated Price Contract

December 22, 2016

Dated for reference this 22nd day of December, 2016

BETWEEN:

CORPORATION OF THE CITY OF PORT COQUITLAM, a municipal corporation under the *Community Charter*, SBC 2003, c. 26 and the *Local Government Act*, RSBC 2015, c. 1 and having offices at 2580 Shaughnessy Street, Port Coquitlam, British Columbia, V3C 2A8

(the “**City**”)

AND:

VENTANA CONSTRUCTION (POCO) CORP., a corporation incorporated under number BC1089636 under the *Business Corporations Act*, SBC 2002, c. 57 and having offices at 3875 Henning Drive, Burnaby, BC V5C 6N5

(the “**Design-Builder**”)

GIVEN THAT:

- A. On July 30, 2015 the City issued a request for proposals for the development of certain City lands with a community recreation complex;
- B. On October 2, 2015 the City received a proposal from a consortium led by Ventana Construction Corporation, an affiliate of the Design-Builder, in response to the request for proposals;
- C. After the City evaluated proposals for the project, the City asked Ventana Construction Corporation to carry out due diligence required to reduce project risks and to draft the required specifications and standards required to substantially enter into a design and build agreement, in accordance with the following Proposal Documents:
 - (a) the October 2, 2015 proposal,
 - (b) a November 30, 2015 letter to modify the proposal,
 - (c) a January 14, 2016 letter to further modify the proposal, and
 - (d) the June 17, 2016 Due Diligence Report;
- D. The City and Ventana Construction Corporation entered into memoranda of understanding dated April 4, 2016 and July 28, 2016 in relation to the provision by Ventana Construction Corporation of the additional due diligence described in the letters and the memoranda;
- E. The parties have entered into the CCDC herein defined as of the Reference Date herein defined;

- F. The parties have agreed that the Design-Builder will design and build the new City Community Recreation Complex on the Lands herein defined in compliance with the terms and conditions of the CCDC herein defined, this Agreement which contains supplementary terms and conditions and the other Project Agreements (as applicable);
- G. Quantum Properties Montrose Inc. (“Quantum”), being a member of the consortium that delivered the Project proposal dated October 2, 2015 to the City, is purchasing the Residential Lands herein defined from the City for residential and commercial development, and the Design-Builder (under an agreement between the Design Builder and Quantum) is paying the City the consideration for the Residential Lands (other than the initial deposit) by way of an offset against the City’s liability for progress payments to the Design-Builder under this Agreement;

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein and the sum of \$10.00 paid by each party to the other party and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each party), the parties covenant and agree as follows:

1. INTERPRETATION

1.1 Defined Terms

In this Agreement, the definitions in the CCDC apply, in addition to the following definitions:

- (a) “**BC**” means the Province of British Columbia;
- (b) “**Business Day**” means a day other than a Saturday, Sunday or statutory holiday in BC;
- (c) “**CCDC**” means the CCDC Design-Build Stipulated Price Contract 14 2013 entered into by the parties as of the Reference Date, and includes the Contract Documents;
- (d) “**City Funding**” means funding for the Project that will be provided by the City via payments contemplated by Section 9.1;
- (e) “**City Funding Payments**” means the payments that become due to the Design-Builder under Section 9.1 in relation to the City Funding;
- (f) “**Community Charter**” means the *Community Charter*, SBC 2003, c. 26, as amended or re-enacted from time to time;
- (g) “**Complex or Project**” means the community recreation facility described in the Proposal Documents, and subject to the foregoing generally means the construction of the facility in accordance with the terms and conditions of this Agreement;

- (h) “**Construction Period**” means the time between the Reference Date and Substantial Performance of the Work (but excluding the day when Substantial Performance of the Work is achieved);
- (i) “**Court**” means a court of law of competent jurisdiction;
- (j) “**Environmental Damage or Degradation**” means the presence of contamination in water, soil or air, in violation of applicable environmental laws (including, without limitation, environmental laws enacted after the time at which the Hazardous Substance causing the contamination is first present), caused by any Hazardous Substance, and includes death or injury to plants, animals or human beings resulting in whole or in part from such contamination;
- (k) “**Execution**” of this Agreement means the signing and delivery of this Agreement by both the City and the Design-Builder;
- (l) “**FOIPPA**” means the *Freedom of Information and Protection of Privacy Act* (BC), as amended or replaced from time to time;
- (m) “**Hazardous Substance**” means any solid, liquid, gas, odor, heat, sound, vibration, radiation or other substance or emission that is a contaminant, pollutant, dangerous substance, toxic substance, hazardous waste, hazardous material or hazardous substance that is or becomes regulated by or under any applicable environmental law or that is or becomes classified as hazardous or toxic by or under any applicable environmental law;
- (n) “**Lands**” means the lands described in Schedule A, and for certainty does not include the Residential Lands;
- (o) “**Local Government Act**” means the *Local Government Act*, RSBC 2015, c. 1, as amended or re-enacted from time to time;
- (p) “**LTO**” means the Land Title Office;
- (q) “**Overhead**” means all costs associated with management, supervision, insurance, bonding, as-built preparation and warranty, including the provision of and maintaining office coordination, office costs, site supervision, site trailer, telephone service, long distance charges, courier, as well as permits, insurance and bonding costs, including premium increases, small tools and general supplies as required for the project;
- (r) “**Project Agreements**” means the agreements described in section 1.4;
- (s) “**Project Financing**” means the financing to be obtained by the City necessary to meet the City’s funding obligations under this Agreement;
- (t) “**Proposal Documents**” means the records listed in paragraph C of the preamble to this Agreement;

- (u) **“Purchase and Sale Agreement”** means an agreement for the sale of the Residential Lands by the City to the Design-Builder (or the Design-Builder’s nominee), that is generally in keeping with Schedule B;
- (v) **“Reference Date”** means the date identified on page 2 of this Agreement, namely December 22, 2016;
- (w) **“Residential Lands”** means, collectively, those lands and premises set out in Schedule 1 of the Purchase and Sale Agreement and includes lands to be used for residential and mixed residential and commercial uses;
- (x) **“Substantial Performance of a Phase of the Work”** means that the phase in question or a substantial part of it is in use or ready for use for the purpose intended, with each phase defined by a separate application for a building permit;
- (y) **“Term”** means the period from and including the Reference Date to and including the date of the Substantial Performance of the Work, being the day the final Warranty period commences under the separate two year Warranty agreement referred to in subparagraph (y)(ii), and without limitation the Term must not exceed five years less one day from the Reference Date; and
- (z) **“Termination Event”** means any event described in Section 14.6, and subject to the foregoing, generally means an event or circumstance entitling the City to terminate this Agreement;
- (aa) **“Warranty”** has the meaning ascribed to it in GC 12.5 of the CCDC, except that GC 12.5 and this Agreement are modified as follows:
 - (i) the Warranty under the CCDC constitutes separate agreements between the parties on terms identical to those in GC 12.5 as modified herein, with separate consideration of \$1.00 from the City to the Design-Builder and a two year term commencing after each Substantial Performance of a Phase of the Work;
 - (ii) the words “one year from the date of Substantial Performance of the Work” in GC 12.5 are deleted and replaced with “two years from the date of Substantial Performance of a Phase of the Work for each phase”; and
 - (ii) every other reference to “one year” in GC 12.5 is deleted and replaced with “two year”.

1.2 Section References

References in this Agreement to Sections of this Agreement are to the correspondingly numbered provisions of this Agreement. References to Schedules are to the correspondingly numbered Schedules listed in Section 1.3.

1.3 Schedules

The following Schedules delivered with this Agreement at the time of Execution of this Agreement are for every purpose to be considered as part of this Agreement (and provisions of the Schedules are to be considered as provisions of this Agreement):

Schedule A - Lands
 Schedule B – Purchase and Sale Agreement

Schedules to Purchase and Sale Agreement:

Schedule 1 – Residential Lands
 Schedule 2 – Precinct Plan
 Schedule 3 - Rental Housing Agreement
 Schedule 4 – Seniors’ Housing Agreement
 Schedule 5 – Restaurant Restrictive Covenant
 Schedule 6 – Facility Use Agreement
 Schedule 7 – Option to Purchase

1.4 Entire Agreement

The CCDC is incorporated into and forms part of this Agreement. This Agreement (including the CCDC), the two year Project Warranty agreements referred to in section 1.1(aa)(i), and the agreements attached as schedules to this Agreement together constitute the entire agreement between the City and the Design-Builder regarding the subject matter of the Project Agreements, and together supersede any previous agreements, negotiations and understandings. There are no agreements, representations, warranties, terms, conditions or commitments regarding the subject matter of the Project Agreements except as expressed in the Project Agreements. For certainty, the Project Agreements are the following:

- (a) this Agreement, which incorporates the CCDC and Proposal Documents;
- (b) the two year Project Warranty agreements referred to in section 1.1(aa)(i),
- (c) the Purchase and Sale Agreement; and
- (d) the agreements that are schedules to the Purchase and Sale Agreement.

Any reference to this “Agreement” in this Agreement is also a reference to the CCDC and the relevant Project Documents unless otherwise expressly stated.

1.5 Currency

In this Agreement, all references to dollar amounts are in Canadian currency.

1.6 No Agency, Joint Venture, Partnership or Loan

This Agreement is not intended to and does not constitute:

- (a) either party as the agent of the other for any purpose, or otherwise create any relationship of agency;
- (b) or create any joint venture;
- (c) or create any partnership; or
- (d) the relationship of lender and borrower;

and neither party shall allege or assert for any purpose that this Agreement constitutes or creates a relationship of agency, joint venture, partnership, or lender and borrower.

1.7 PRIORITY

If there is a conflict between the Project Documents, the order of priority of the documents, from highest to lowest, is as follows:

- (a) this Agreement (being these Supplemental Terms and Conditions), including the Proposal Documents,
- (b) the CCDC Agreement,
- (c) the CCDC Definitions,
- (d) the CCDC General Conditions;
- (e) the Owner's Statement of Requirements;
- (f) the Construction Documents;
- (g) the two year Project Warranty agreement,
- (h) the other Project Agreements.

Later dated documents shall govern over earlier documents of the same type, and amendments to documents shall govern over documents so amended.

2. DESIGN AND BUILD

2.1 Design-Builder Assumption

The Design-Builder assumes all of the rights, duties, liabilities and obligations of Ventana Construction Corporation in respect of all Work performed by Ventana Construction Corporation prior to the date of this Agreement that relates to the Project, including without limitation design and pre-construction work performed in relation to the proposals issued by or the memorandums of understanding entered into by Ventana Construction Corporation. Without limiting the foregoing, the Design-Builder and the City will enter into an assignment and assumption

agreement with Ventana Construction Corporation that confirms such assumption and release. Under a separate agreement, the City has agreed to release and forever discharge Ventana Construction Corporation but not the Design Builder from all claims, demands, actions, causes of action, proceedings, contracts, counterclaims, damages, expenses, liabilities, taxes and costs which the City can, shall or may have against Ventana Construction Corporation by reason of or arising out of or in any way connected with the Work.

3. CONDITIONS

3.1 Conditions Precedent

This Agreement is subject to the following conditions precedent:

- (a) the Design-Builder's Board of Directors approving this Agreement and the Design-Builder satisfying all requirements under the *Business Corporations Act* (BC) and other applicable enactments;
- (b) the execution and delivery of the Purchase and Sale Agreement;
- (c) the City's Council approving this Agreement.

These conditions precedent are for the sole benefit of the City and must be satisfied or waived in writing on or before December 23, 2016, failing which this agreement will be terminated. In consideration of the sum of \$10.00, the receipt and sufficiency of which is hereby acknowledged by the Design-Builder, the Design-Builder agrees not to terminate this Agreement during the period for waiver by the City of these conditions. The risk of claims and costs if the conditions are not satisfied or waived by December 23, 2016 rests with the City.

4. THE LANDS

4.1 Access and Use

Subject to the provisions of this Section 4.1, the City provides the Design-Builder, its employees, agents, and invitees with unlimited, non-exclusive access to and use of, for any purpose the Design-Builder deems appropriate including for the purpose of performing its obligations under this Agreement, to all of the Lands including all fixtures and improvements constructed thereon under this Agreement. The parties acknowledge and agree that this licence of occupation does not require a statutory notice of disposition by the City.

4.2 Commencement and Duration

The rights to unlimited non-exclusive access to and use of the Lands under Section 4.1 comes into effect upon the Reference Date and continues until the expiry of the Term or sooner termination of this Agreement.

4.3 No Access Fee

No fee or other amount shall be payable by the Design-Builder to the City for its right of access to and use of the Lands under this Agreement.

4.4 Lands Outside of the Lands

The Design-Builder shall be responsible for and shall rectify any damage to the lands outside of the Lands caused by the Design-Builder, its agents, subcontractors or others for whom the Design-Builder is legally responsible in carrying out the Project. For certainty, the Work shall be undertaken on the Lands and on City owned real property extending from the Lands to the curb of every contiguous highway.

4.5 Utility Agreements

Subject to the City's obligations under Section 2.11, 3.4 and as otherwise set out in this Section 4.5, the Design-Builder shall negotiate and arrange all agreements required in respect of utilities in order to carry out the Project (the "**Utility Agreements**"), on the following basis:

- (a) to the extent practicable, the Design-Builder shall enter into the Utility Agreements in its own right;
- (b) where required by a utility, the City will be a party to the Utility Agreements and, if the utility requires the City to be a party to the Utility Agreements, then the Design-Builder shall keep the City informed to a reasonable extent and in a reasonable manner on an ongoing basis as to the negotiations with such utility and in any event shall keep the City informed to the extent and in the manner as requested by the City, acting reasonably; and
- (c) regardless of whether the City is a party to the Utility Agreements, the Design-Builder shall until the end of the Term or sooner termination of this Agreement duly perform and carry out the Utility Agreements, and indemnify the City against any failure by the Design-Builder to perform them, except only to the extent that such failure was caused or contributed to by the City.

The City acknowledges the possibility that additional utility and other authorized uses may, throughout the Term, be required and the City undertakes to provide all reasonable cooperation in order to reasonably accommodate such future uses. Subject to section 13.4 and any fault that may be reasonably attributed to the Design-Builder, the risk of any utility delays rests with the City.

4.6 Condition of the Lands

Subject to the terms and conditions of this Agreement, particularly GC 9.1.1 of the CCDC, and subject to the Design-Builder's obligations under this Agreement to carry out the Project, the

Design-Builder shall maintain the Lands in good and proper order and repair throughout the duration of this Agreement, and shall:

- (a) be responsible for repairing all damage to the Lands (including infrastructure in or under the Lands), arising as a result of the Design-Builder's operations under the Contract, excepting only damage caused by acts or omissions of the City or its employees, agents or contractors (except the Design-Builder);
- (b) dispose of garbage from the Lands;
- (c) not stockpile any material on the Lands except during the Construction Period;
- (d) not commit or permit by the Design-Builder's agents or subcontractors or those for whom the Design-Builder is legally responsible, any waste or nuisance on the Lands; and
- (e) promptly deal with any Environmental Damage or Degradation to the Lands as required by applicable laws (which dealing with may require excavation and removal or may permit implementation of a risk management plan depending upon the applicable laws) in accordance with GC 9.2 of the CCDC. Compensation and extensions of Contract Time for any and all Work required to address Environmental Damage or Degradation to the Lands will be determined based on and under GC 9.2.

4.7 Permitted Use

The Design-Builder covenants that it (and others for whom it is legally responsible):

- (a) will use the Lands only for the purposes of the Project; and
- (b) will not, from and after Substantial Performance of the Work, interfere with the Complex being continuously in operation excepting only such closures or partial closures as are expressly contemplated and authorized by the CCDC, including the Technical Requirements.

4.8 No Encumbrances On Lands

The City represents that it has not granted or permitted to be granted, and covenants that it will not grant or permit to be granted, any mortgage or other security interest in the Lands. The City covenants that it will not grant or permit to be granted any encumbrance that can be registered against title to the Lands that results in the City being in breach of its obligations set out in Section 4.12 (Access and Use).

4.9 Liens

The Design-Builder shall promptly pay all proper accounts for work done or materials furnished under all contracts it enters into relating to the Project, excepting those sums required to be retained under the provisions of any applicable statute of BC, and shall not by any act or omission cause, encourage, suffer or allow any lien or claim under any such statute or in equity to be made against the City or filed or registered against the Lands by reason of work, services or materials supplied or claimed to have been supplied to the Design-Builder or anyone holding any interest through or under the Design-Builder except where such lien or claim is caused by the City withholding any amount payable under this Agreement. The Design-Builder shall at its own expense promptly take all steps required to effect a discharge of any lien or deal with any claim so filed or registered.

4.10 Ownership of Improvements

The Design-Builder and City acknowledge and agree that the City is the owner of the Lands, Complex and all other fixed improvements that the Design-Builder may from time to time construct upon the Lands from the date of this Agreement.

4.11 Access and Use

The City covenants that the Design-Builder's access to and use of the Lands pursuant to Section 4.1 shall be without any disturbance or interference from the City or any person claiming a right of access to or use of the Lands from or under the City, subject to the exercise by the City of any express right under and in accordance with this Agreement.

4.12 Payment of Taxes and Municipal Fees on Lands

The City will be responsible for any property taxes, special taxes, local area taxes, permit fees, requisitions and other municipal fees and charges that may be imposed on the Lands and all improvements thereon.

4.13 Permits and Approvals

Whether or not the City is the applicant for the permits and approvals referred to in GC 10.2 of the CCDC, and provided the City provides all such reasonable assistance as the City is able to offer or arrange that may be required without unduly fettering its discretion or pursuing amendment of any legislation or subordinate legislation, the Design-Builder shall, until the earlier of end of the Term or termination of this Agreement, duly perform and carry out on behalf of the City all obligations of the City under the permits and approvals, and shall, subject to Section 2.1, indemnify the City against any liability to the extent caused by the Design-Builder's failure to perform all such obligations on behalf of the City, except only to the extent that such failure was caused or contributed to by the City or those for whom the City is legally responsible.

5. DESIGN AND BUILD OF THE COMPLEX

5.1 Design-Builder Solely Responsible for Costs

Except as expressly set out in this Agreement, the Design-Builder is solely responsible for paying all costs, tariffs, fees and charges of any nature whatsoever required to complete the Work excepting only:

- (a) the costs, tariffs, fees and charges of the City's own personnel, consultants and professional advisors;
- (b) the costs, fees and charges of any mediation or arbitration pursuant to dispute resolution; and
- (c) any costs, tariffs, fees, charges or payments expressly to be made by the City under section 4.12 of this Agreement.

The City shall not be obligated to pay any costs, fees or charges in relation to the Project except as expressly set out in this Agreement, unless the need for the costs, fees or charges is caused or contributed to by the City or those for whom the City is legally responsible or arising.

5.2 Supervision

GC 3.7 Supervision of the CCDC is modified as follows:

3.7.3: The appointed representative shall be satisfactory to the Owner, acting reasonably.

3.7.4: The Design-Builder shall, upon the request of the Owner, remove any Superintendent who, in the reasonable opinion of the Owner, is incompetent or has been guilty of improper conduct, and shall forthwith designate another superintendent who is acceptable to the Owner.

6. WORKSAFE BC

6.1 The Design-Builder is deemed to be the "Prime Contractor" for the purposes of the *Workers Compensation Act*, as amended, and regulations thereunder.

7. SUPERVISION – NAMING OF PROJECT TEAM

7.1 GC 3.7.1 of the CCDC is amended to provide that as of the Reference Date the Design-Builder shall deliver to the City in writing the identity and contact information for the members of the Design-Builder's project team specified in the Proposal Documents, and the Design-Builder shall not change these components of the project team without the prior written consent of the City.

8. OTHER AGREEMENTS

8.1 Concurrent with the execution and delivery of this Agreement, the parties will execute and deliver the following:

- (a) the CCDC,
- (b) the Purchase and Sale Agreement, and

and the City will register the executed and registrable agreements that are schedules to the Purchase and Sale Agreement in the LTO concurrently with the transfer documents under the Purchase and Sale Agreement.

9. PAYMENT

9.1 Payment of City Funding

Given that payments by the Design-Builder for the Residential Lands are due and owing to the City by the Design-Builder under the Purchase and Sale Agreement, and provided that the City and Quantum complete the Purchase and Sale Agreement, the City will make the payments to the Design-Builder at the times and in the amounts stipulated under Article A-5 and GC 5.3 of the CCDC, subject to the deduction of the following amounts on the following dates on account of the purchase and sale of the Residential Lands:

- (a) \$4,000,000.00 on August 31, 2017;
- (b) \$4,000,000.00 on July 29, 2018;
- (c) \$6,000,000.00 on July 29, 2019;
- (d) \$2,150,000.00 less the amount of any and all credits made pursuant to the Purchase and Sale Agreement, on July 29, 2020,

and if the City exercises its Option to purchase any part of the Residential Lands under the Option Agreement and the Purchase and Sale Agreement, or if the sale of the Residential Lands under the Purchase and Sale Agreement does not complete, the City may at its option choose to:

- (e) pay the Design-Builder the full Contract Price (subject to adjustments as provided in the Agreement) less, where the Purchase and Sale Agreement completes and the City subsequently exercises the Option, all holdbacks applied in accordance with sections 9.1(a) through (d) prior to the date of the City's exercise of the Option under the Purchase and Sale Agreement; or
- (f) transfer the Residential Lands directly to the Design-Builder or, at the Design-Builder's discretion and direction, a nominee of the Design-Builder, within 30 days of:

- (i) August 31, 2017 if the Purchase and Sale Agreement does not complete; or
- (ii) the transfer of the Residential Lands to the City under the Option Agreement.

9.2 GST

The City represents and warrants that it will be responsible for remission and payment of the Goods and Services Tax (“GST”) under Part IX of the *Excise Tax Act* (Canada), and that its GST registration number is 121361026 RT 0001. The City acknowledges and agrees that any amounts paid by the City to the Design-Builder pursuant to this Agreement (including payments in kind in the form of property or services) are exclusive of GST. If the Design-Builder is nevertheless required by the Canada Revenue Agency to remit any GST in relation to the Work, the City shall reimburse the Design-Builder in the amount of such remittance.

9.3 Set-off

Without limiting section 9.1, the City is entitled to set-off against any payment an amount:

- (a) finally determined (that is, no longer subject to the Dispute Resolution Procedure) to be payable by the Design-Builder to the City under this Agreement; and
- (b) paid by the City under and in accordance with any statute in respect of any valid lien or claim arising from any act or omission of the Design-Builder, or those for whom it is legally responsible, in relation to the Project, except a lien filed as a result of non-payment to the Design-Builder by the City;

The City, upon becoming aware that it is or may become obligated to pay and before paying an amount contemplated by clause (b) such that a right of set-off may arise under clause (b), shall give the Design-Builder such advance notice as may be practicable in the circumstances (without exposing the City to any risk of being obliged to pay the same amount twice), with a view to affording the Design-Builder an opportunity to dispute (provided the City is satisfied the dispute is bona fide), or make arrangements to remove or eliminate, the lien or claim.

9.4 Payment before End of Term

The City is not liable to the Design-Builder for any payment for any portion of the Works that is not Substantially Performed within five years of the Reference Date. If the Contract Time for performance of the Work has been extended or should be extended in accordance with this Agreement such that the Substantial Performance of the Work is or should be scheduled to a date after the five year end date, the Design Builder will cease performing Work upon the five year end date without penalty or liability.

9.5 Entire Compensation

The Contract Price, subject to modification under this Agreement, constitutes the entire compensation payable by the City to the Design-Builder for the Work.

9.6 Initial Payments by City

Notwithstanding Article A-5 of the CCDC:

- (a) the initial two applications for payment will each, in addition to including the Design-Builder's claim for the value, proportionate to the amount of the Contract, of the Design Services and of the Work performed and Products delivered to the Place of the Work as of the last day of the payment period, include a claim for \$1,650,000 as an advance draw for cash-flow purposes; and
- (b) the third application for payment will, in addition to including the Design-Builder's claim for the value, proportionate to the amount of the Contract, of the Design Services and of the Work performed and Products delivered to the Place of the Work as of the last day of the payment period, include a claim for \$1,700,000 as an advance draw for cash-flow purposes.

The City shall make payment of the aforementioned advance draws on or before 20 calendar days after the later of:

- (a) receipt by the Payment Certifier of the application for payment in question, or
- (b) the last day of the monthly payment period for which the application for payment in question is made.

Once the difference between:

- (a) the remaining Contract Price for the Work (calculated on the basis of all Change Orders, Change Directives and applicable deductions as set out in Section 9.1); and
- (b) the total of all amounts paid to Ventana,

is reduced to an amount less than \$7,000,000, the City may set-off and deduct the amount of the aforementioned advance payments from the remaining progress payments.

9.7 Change Orders

GC 6.2 of the CCDC Change Order is modified as follows:

6.2.4: For work performed by the Design-Builder directly: cost of materials plus cost of the Design-Builder's actual and necessary expenditures for wages of labour and field supervision plus labour burden, plus 15% mark-up for Overhead and profit combined.

6.2.5: For work performed by Design -Builder's subcontractors for the Contract: Total cost of Subcontractor's work, to which the Design-Builder may add 10% mark-up for Overhead and profit combined.

10. INSURANCE, DAMAGE AND DESTRUCTION

10.1 Insurance Requirements

The parties acknowledge and agree that PART 11 of CCDC will apply to insurance requirements under this Agreement, except

- (a) the requirements under section 10.2 through 10.3 of this Agreement will apply;
- (b) where a different insurance requirement is set out in a Schedule to this Agreement in relation to that Schedule; and
- (c) a reference in CCDC to \$2,000,000 is deemed to be a reference to \$5,000,000.

10.2 Other Requirements

All insurance required under Section 10.1:

- (a) shall be primary and shall not require the pro rata sharing of any loss by any insurer of the City; and
- (b) shall be endorsed to provide the City with 30 days advance written notice of:
 - (i) material change restricting coverage (with the exception of the automobile insurance coverage required under Schedule G (Insurance Requirements)); or
 - (ii) cancellation.

10.3 Evidence of Insurance

The Design-Builder shall:

- (a) deliver or cause to be delivered to the City, in relation to required insurance, evidence satisfactory to the City acting reasonably, that such insurance has been obtained (which evidence may include but not be limited to detailed insurance cover notes and detailed certificates of insurance and written confirmation from the Design-Builder's insurance broker that all required insurance is in effect and complies with each of the insurance requirements of every insurance policy required to be obtained and maintained by the Design-Builder),

- (b) provide or cause to be provided, not less than 10 days prior to expiration of any then current policy documentation evidencing to the satisfaction of the City (acting reasonably) the renewal, extension or replacement of such insurance and as soon as reasonably practicable, and in any event within 30 days after expiration of any then current policy, certified copies of policies evidencing to the satisfaction of the City (acting reasonably) the renewal, extension or replacement of such insurance.

Delivery to and examination by the City of any policy of insurance or certificate or other form of documentation evidencing such insurance shall not relieve the Design-Builder of any of its obligations pursuant to the provisions of this Agreement or the CCDC and shall not operate as a waiver by the City of any rights.

10.4 City May Insure

If the Design-Builder at any time fails to furnish the City with evidence of all required insurance in the manner specified by Section 10.2, or if subsequent to providing evidence of all required insurance the Design-Builder's insurance is subject to a material change restricting coverage or is cancelled, the City may upon five Business Days' notice to the Design-Builder, obtain the required insurance not so evidenced or so restricted or cancelled, and may set-off the cost of the insurance so obtained against any amount payable to the Design-Builder under this Agreement.

11. [INTENTIONALLY DELETED]

12. DESIGN-BUILDER'S REPRESENTATIONS AND OBLIGATIONS

12.1 Design-Builder's Representations

The Design-Builder represents and warrants to the City that, as of the date of Execution of this Agreement:

- (a) the Design-Builder is duly organized, validly existing, in good standing, and has the capacity, power and authority to enter into and perform its obligations under this Agreement;
- (b) this Agreement has been duly authorized on behalf of the Design-Builder, and upon its execution and delivery constitutes a legal, valid and binding obligation of the Design-Builder;
- (c) the Design-Builder has made plain and true disclosure to the City of all facts and circumstances within the Design-Builder's knowledge as of the Reference Date regarding the Design-Builder and the Project that might reasonably be material to the willingness of the City to enter into this Agreement with the Design-Builder having regard to the information requested by the City.

12.2 Reporting Requirements

In addition to all specific reports and notices required by this Agreement and the CCDC, the Design-Builder and the City will develop a mutually agreeable reporting process which will include the following reporting by the Design-Builder:

- (a) during the Construction Period, a monthly report on the progress of the Project, including but not limited to a report of any material events, developments or circumstances arising in relation to the Project since the last monthly report, all in a form and format prescribed or approved from time to time by the City, acting reasonably;
- (b) such other periodic reports as the City may from time to time reasonably require; and
- (c) throughout the Construction Period, a response delivered in a timely manner to any inquiry reasonably made by the City in relation to any aspect of the Project;

except that, to the extent that such reporting includes commercially sensitive information, it may be delivered to the City expressly in confidence and marked as confidential.

12.3 Design-Builder's Other Obligations

The Design-Builder shall take all such reasonably necessary actions in the context of the Project as are from time to time required in order to allow the City, other governmental authorities, police services, park administrative officers and conservation officers and emergency response services to carry out their respective statutory duties in relation to the Complex.

13. CITY'S REPRESENTATIONS AND OBLIGATIONS

13.1 City's Representations

The City represents and warrants to the Design-Builder, as of the date of Execution of this Agreement, that:

- (a) the City has all requisite capacity, power and authority to enter into and perform its obligations under this Agreement;
- (b) this Agreement has been duly authorized on behalf of the City, and upon execution and delivery constitutes a legal, valid and binding obligation of the City; and
- (c) the City has the legal authority to use the Lands for the Project.

13.2 City's General Obligation

The City covenants to do all things specified in this Agreement to be done by the City, in such manner and at such times as specified in this Agreement.

13.3 Assistance with Permits and Utility Agreements

The Design-Builder shall provide the City with prompt notice of each application that the Design-Builder makes to a regulator for a permit or approval in respect of the Project. Without derogating from the Design-Builder's responsibilities under this Agreement and the CCDC to obtain all permits and approvals required for the Project, and to make all required arrangements relating to utilities, the City shall, in response to any reasonable request by the Design-Builder in relation to such permits and approvals and required arrangements, provide the Design-Builder with such reasonable assistance as the City is able to offer or arrange without unduly fettering its executive discretion or pursuing amendment of any legislation or subordinate legislation, but otherwise including taking any action required to obtain a permit or approval which only the City can take and which cannot be taken by the Design-Builder on the City's behalf, and in any case where the City concludes that a third party is acting unreasonably in relation to the negotiation or issuance of such permits, approvals or required arrangements, the exercise by the City of all legal rights and remedies available to it in relation to such third party, to the extent it is reasonable in the circumstances for the City to exercise such legal rights and remedies. The Design-Builder shall provide notice to the City of unreasonable delay experienced by the Design-Builder in obtaining permits and approvals required for the Project or in making required arrangements with utilities as soon as practicable after becoming aware of the delay, including details of the cause or perceived cause of the delay and the efforts to date and anticipated further efforts of the Design-Builder to prevent or minimize the duration of the delay.

14. BONDING

14.1 The Design-Builder shall, prior to commencement of the Design Services under this Agreement, deliver to the City the Contract security in accordance with GC 11.2 of the CCDC, in the amount of fifty (50) per cent of the Contract Price, at the City's expense.

15. INTENTIONALLY DELETED

16. COMMUNICATIONS

16.1 Notices

Any notice, consent, approval or other communication under any provision of this Agreement must be in writing to be effective, and is effective when delivered by any means, including fax transmission or e-mail, to the following respective addresses:

- (a) **To the Design-Builder at:**

Ventana Construction (Poco) Ltd.

3875 Henning Drive, Burnaby, BC V5C 6N5

Attention: John Sharp

Telephone: (604) 291-9000

E-mail: jsharp@ventanaconstruction.com

(b) To the City at:

City of Port Coquitlam

2580 Shaughnessy Street

Port Coquitlam, BC V3C 2A8

Attention: Kristen Meersman

Telephone: 604-927-5410

E-mail: meersmank@portcoquitlam.ca

or to such other address, email or facsimile number as a party may advise the other by written notice hereunder. Any notice addressed and provided as aforesaid will be deemed to have been given on the day of delivery or transmission by email or facsimile if a Business Day, and if not a Business Day, then on the next Business Day or if mailed, on the third Business Day following the posting thereof. Notices will not be mailed during the currency of a postal strike, dispute or slowdown, and during such time, notice will only be effective if emailed or transmitted (without a failure notice) or if delivered.

16.2 Authority to Give Notices

The parties designate for the time being the following individuals as having authority to communicate to the other any notice, approval, consent, waiver or other communication under this Agreement:

- (a) in the case of the City: Kristen Meersman or her designate;
- (b) in the case of the Design-Builder: John Sharp or his designate.

In the absence of any further designation or limitation communicated with reference to this Section 16.2, each party may assume that any notice, approval, consent, waiver or other communication under this Agreement given by the above individual has been duly authorized and is binding upon the other party.

16.3 Public Announcements

Neither party shall make, cause or permit, any entity not at arms-length with the party to make any public announcement relating to this Agreement except as approved in advance by the other party, acting reasonably.

16.4 Confidential Information

Each party shall, upon delivering any information to the other that includes information delivered in confidence, identify the information delivered in confidence (the “**Confidential Information**”). The receiving party shall maintain (and shall ensure that its officers, employees, consultants, advisors and contractors maintain) the confidentiality of the Confidential Information, with the exception of information that:

- (a) at the time of the disclosure to the receiving party, was in the public domain;
- (b) after disclosure to the receiving party became part of the public domain through no fault of the receiving party or those for whom it is responsible at law;
- (c) was in the possession of the receiving party at the time of disclosure to it, as demonstrated by written records; or
- (d) was received by the receiving party from a third party who had a lawful right to disclose the information.

16.5 Disclosure of Confidential Information

Neither party shall disclose Confidential Information delivered by the other except:

- (a) to such of its affiliates, officers, employees, consultants, advisors and contractors (including, in the case of the Design-Builder, its lenders and potential lenders, investors and potential investors, and rating agencies, surety companies and prospective guarantors) who reasonably require access to the Confidential Information for the due performance of this Agreement or to further the purposes of this Agreement;
- (b) as required by *FOIPPA* or any other applicable law; or
- (c) where the disclosure is consented to by the other.

16.6 Collection, Use and Disclosure of Personal Information

For the purposes of this Section, “**personal information**” has the same definition as that which is found in *FOIPPA*. The parties acknowledge that *FOIPPA* applies to information obtained, related, generated, collected or provided for the parties under this Agreement and they agree to adhere to *FOIPPA*. Neither party shall collect, use or disclose any personal information under this Agreement except that which is reasonably required to fulfil its obligations under this Agreement, or as otherwise authorized by the other party. Each party shall protect the personal information it collects under this Agreement and shall make reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or destruction. Upon request, each party shall provide to the other party, within seven days, any records that are requested under the access provisions of *FOIPPA* that are in the custody or under the control of the party. The parties shall ensure that their employees, agents, and subcontractors comply with this Section 16.6.

17. CONTRACT ADMINISTRATION

17.1 Contract Administration Representatives

Immediately following Execution of this Agreement, the City and the Design-Builder will each designate a representative or representatives to establish protocols and procedures in relation to this Agreement, designed to facilitate the effective, efficient and cooperative administration of this Agreement and avoidance of disputes.

17.2 Mutual Cooperation

In administering, interpreting and carrying out their respective obligations under this Agreement, the parties mutually undertake to deal fairly and in good faith, and to act at all times in a spirit of mutual cooperation.

18. DISPUTE RESOLUTION

18.1 Dispute Resolution Procedure

The parties acknowledge and agree that PART 8 of CCDC will apply to disputes arising under this Agreement, except where a different dispute resolution process is set out in a Schedule to this Agreement in relation to that Schedule. Despite the foregoing, the parties agree to litigate (rather than arbitrate) any dispute not resolved by negotiation or mediation.

18.2 Termination and Dispute Resolution Procedure

A party may refer to the Dispute Resolution Procedure for advance determination the question of whether it has grounds for terminating this Agreement. However, the submission of that question to the Dispute Resolution Procedure shall not prevent either party from terminating this Agreement in accordance with its provisions prior to determination of that question by the Dispute Resolution Procedure. If either party has purported to terminate this Agreement in

accordance with its provisions, the other party may submit to the Dispute Resolution Procedure the question of whether such termination was made in accordance with this Agreement, and request an award of damages for wrongful repudiation of this Agreement.

18.3 Payments Where Amount in Dispute

Where the amount of any payment required to be made under this Agreement is in dispute, the party required to make the payment shall pay:

- (a) such portion of the payment as it does not dispute in good faith; and
- (b) an amount recommended by a third party cost consultant retained by the party at its sole cost.

19. REMEDIATION OF RESIDENTIAL LANDS

19.1 The Design-Builder and the City acknowledge that a certain amount of Environmental Degradation or Damage has been identified on, in or under the Residential Lands. The Design-Builder shall remediate the identified Environmental Degradation or Damage prior to the transfer of the Residential Lands to Quantum pursuant to the Purchase and Sale Agreement. If additional or other Environmental Degradation or Damage is discovered on the Residential Lands prior to completion of the aforesaid remediation work, the City may direct the Design-Builder to perform additional remediation work in writing by Change Order.

19.2 Without limitation, the Design-Builder must apply for a Certificate of Compliance prior to May 31, 2017.

20. GENERAL PROVISIONS

20.1 Assignment

Neither party may assign this Agreement or any right or benefit under this Agreement.

20.2 Intellectual Property

All intellectual property created by the Design-Builder or its subcontractors, including but not limited to copyright, patents and industrial designs, and including without limiting the generality of the foregoing all plans, drawings and designs created by the Design-Builder or its subcontractors in relation to the Project, created or invented in the course of the Design-Builder's carrying out of the Project (collectively, the "**Assigned Intellectual Property**"), shall be owned by the Design-Builder. The City may retain copies, including electronic or digital and other reproducible copies, of the Assigned Intellectual Property for information and reference in connection with the City's use and occupancy of the Project. Copies may only be used for the purposes intended and for the same Project, by the City only, and may not be offered for sale or transfer without the express written consent of the Design-Builder. Except for reference purposes, the Assigned Intellectual Property shall not be used for renovations, additions or

alterations to the Project or on any other project without a written licence from the Design-Builder. The City shall further be entitled to keep original models or architectural renderings which the City specifically commissioned and paid for.

20.3 Applicable Law and Jurisdiction

This Agreement shall be governed by the laws in force in BC, including the federal laws of Canada applicable therein. Subject to Section 18.4, BC courts shall have exclusive jurisdiction over all matters arising in relation to this Agreement, and each party accepts the jurisdiction of BC courts.

20.4 No Derogation and Powers Preserved

Nothing contained or implied in this Agreement will impair or affect the parties' rights and powers in the exercise of their functions pursuant to the *Community Charter*, the *Local Government Act* or any other enactment.

20.5 Additional Assurances

The City and the Design-Builder each agree to from time to time do all such acts and provide such further assurances and instruments as may reasonably be required in order to carry out the provisions of this Agreement according to their spirit and intent; but this Section 19.7 shall not in any event be construed as obligating the City to amend or enact any statute or regulation.

20.6 Counterparts

This Agreement may be executed in counterparts, in which case (i) the counterparts together shall constitute one agreement, and (ii) communication of execution by fax or electronic transmission shall constitute good delivery.

The parties have therefore signed this Agreement, by their respective authorized signatories, on the respective dates shown below.

VENTANA CONSTRUCTION (POCO) CORP., by its authorized signatories, this ____ day of _____, 2016

Name:

Name:

CORPORATION OF THE CITY OF PORT COQUITLAM, by its authorized signatories, this ____ day of _____, 2016

Name:

Name:

SCHEDULE A

LANDS [NOT INCLUDING RESIDENTIAL LANDS]

2446 Mary Hill Road

Parcel Identifier: **012-424-790**

Legal Description:

LOT 1 EXCEPT: WEST 10.5 FEET (PLAN WITH BYLAW FILED 6287), BLOCK "B"
DISTRICT LOT 289 GROUP 1 NEW WESTMINSTER DISTRICT
PLAN 1954

Parcel Identifier: **012-424-803**

Legal Description:

LOT 2 EXCEPT: WEST 10.5 FEET (PLAN WITH BYLAW FILED 6287), BLOCK "B"
DISTRICT LOT 289 GROUP 1 NEW WESTMINSTER DISTRICT
PLAN 1954

2150 Wilson Avenue

Parcel Identifier: **003-528-286**

Legal Description:

PARCEL "124" DISTRICT LOT 289 GROUP 1
NEW WESTMINSTER DISTRICT REFERENCE PLAN 64903

SCHEDULE B

PURCHASE AND SALE AGREEMENT

Port Coquitlam Residential Development Lands

THIS AGREEMENT is dated for reference December 22, 2016.

BETWEEN:

CORPORATION OF THE CITY OF PORT COQUITLAM, a municipal corporation under the *Community Charter*, SBC 2003, c. 26 and the *Local Government Act*, RSBC 2015, c. 1 and having offices at 2580 Shaughnessy Street, Port Coquitlam, British Columbia, V3C 2A8

(“Vendor”)

AND:

QUANTUM PROPERTIES MONTROSE INC., a corporation under the *Business Corporations Act*, SBC 2002, c. 57 and having offices at 100 – 32160 South Fraser way, Abbotsford, BC V2T 1W5

(“Purchaser”)

AND:

VENTANA CONSTRUCTION (POCO) CORP., a corporation under the *Business Corporations Act*, SBC 2002, c. 57 and having offices at 3875 Henning Drive, Burnaby, BC V5C 6N5

(the “Ventana”)

In consideration of the covenants and agreements contained in this Agreement, the sum of \$10.00 now paid by the each party to the other parties, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the parties covenant and agree with each other as follows:

1. AGREEMENT

1.1 Purchase and Sale

In accordance with the terms and conditions of this Agreement, the Purchaser will purchase and the Vendor will sell the Residential Lands, free and clear of all liens, charges and encumbrances, except the Permitted Encumbrances.

1.2 Definitions

In this Agreement:

- (a) “Affiliate” means a corporation that is affiliated with another corporation, as defined in the *Business Corporations Act* of British Columbia;
- (b) “Approving Officer” means the approving officer having jurisdiction for subdivision approval under the *Land Title Act* and *Strata Property Act*, for the City;
- (c) “Business Day” means Monday to Friday inclusive of each week, excluding any day which is a statutory holiday in British Columbia and any day when the LTO is closed for business;
- (d) “Closing Date” means the date that is 60 Business Days after the date all Purchaser’s Conditions have been satisfied or waived in writing by the Purchaser under section 4.1 and the Vendor’s Conditions have been satisfied or waived by the Vendor under section 4.2, or an earlier date if the parties by amending this Agreement have agreed in writing to an earlier closing date;
- (e) "Contaminants" means any pollutants, contaminants, deleterious substances, underground or above-ground tanks, lead, asbestos, asbestos-containing materials, hazardous, corrosive, or toxic substances, special waste, waste polychlorinated biphenyls (“PCBs”), PCB-containing equipment or materials, pesticides, defoliants or any other solid, liquid, gas, vapour, odour, heat, sound, vibration, radiation, or combination of any of them, which is now or hereafter prohibited, controlled, or regulated under Environmental Laws;
- (f) “Development Concept” means the concept set out on pages 79 through 87 of the Design-Builder’s proposal dated October 2, 2015, depicting the substantial form, character, location, design and exterior finishing of development on the Residential Lands;
- (g) “Deposit” has the meaning ascribed to it in Section 2.2(a);
- (h) "Environmental Laws" means any statutes, laws, regulations, orders, bylaws, standards, guidelines, protocols, permits, and other lawful requirements of any governmental authority having jurisdiction over the Lands now or hereafter in force relating in any way to the environment, environmental assessment, health, occupational health and safety, or transportation of dangerous goods, including the principles of common law and equity;
- (i) “Facility Use Agreement” means the agreement between the Vendor and Purchaser to permit every resident of a dwelling unit on the Residential Lands that is permitted under the Zoning Amendment Bylaw to use the Vendor’s fitness and swimming facilities without paying a user fee for a period of five years from the date the Vendor issues an occupancy permit for the building in which the dwelling

unit is located, which agreement is reasonably acceptable to the Vendor's Director of Engineering and Public Works and is generally in keeping with Schedule 6;

- (j) "Housing Agreement" means a housing agreement satisfactory to the Vendor under section 483 of the *Local Government Act*, notice of which is filed in the LTO, to preserve some prescribed dwelling units on the Residential Lands as rental housing units and some as senior housing units, which agreement is generally in keeping with Schedules 3 and 4;
- (k) "LTO" means the Land Title Office;
- (l) "Option Agreements" means the three separate options granted by the Purchaser to the Vendor to purchase each of Precinct Parcel A, Precinct Parcel B or Precinct Parcel C on the following dates, each for 80 per cent of the pro rata purchase price under this Agreement of that portion of the Residential Lands, if the Purchaser has failed to complete construction of the footings for the buildings described in the Development Concept by the following dates:
 - (i) Precinct Parcel C: the day that is two years following the Closing Date;
 - (ii) Precinct Parcel A: the day that is four years following the Closing Date;
 - (iii) Precinct Parcel B: the day that is six years following the Closing Date,
 and the Option Agreements provide that the City will discharge an Option Agreement from the title to a Precinct Parcel promptly after the completion of the footings for the building to be constructed on the parcel;
- (m) "Permitted Encumbrances" means and includes encumbrances, rights, and exceptions, restrictions, provisos, conditions and reservations referred to in Section 23(2) of the *Land Title Act*;
- (n) "Precinct Plan" means the subdivision plan in connection with the Precinct Subdivision, substantially in the form that is attached as Schedule 2;
- (o) "Precinct" means one of, and "Precinct [letter]" means a specified one of, the parcels shown on the Precinct Plan;
- (p) "Purchaser's Condition" has the meaning ascribed to it in Section 3.1;
- (q) "Purchase Price" has the meaning ascribed to it in Section 2.1;
- (r) "Purchaser's Solicitors" means Kuhn LLP;

- (s) “Residential Lands” means, collectively, those lands and premises set out in Schedule 1;
- (t) “Sales Taxes” means Goods and Services Tax, Harmonized Sales Tax, value added Tax or similar and other such taxes;
- (u) “Vendor’s Condition” has the meaning ascribed to it in Section 3.2;
- (v) “Vendor’s Solicitors” means Lidstone & Company;
- (w) “Zoning Bylaw Amendment” means an amendment as to the City of Port Coquitlam Zoning Bylaw that implements and realizes the Development Concept and that is not inconsistent with the Official Community Plan.

1.3 Schedules to Purchase and Sale Agreement:

The following Schedules delivered with this Agreement at the time of Execution of this Agreement are for every purpose to be considered as part of this Agreement (and provisions of the Schedules are to be considered as provisions of this Agreement):

Schedule 1 – Residential Lands

Schedule 2 – Precinct Plan

Schedule 3 - Rental Housing Agreement

Schedule 4 – Seniors’ Housing Agreement

Schedule 5 – Restaurant Restrictive Covenant

Schedule 6 – Facility Use Agreement

Schedule 7 - Option Agreement

2. PRICE, DEPOSIT AND PAYMENT

2.1 Purchase Price

Subject to section 2.3 and 8.1, the consideration for the Residential Lands will be the sum of \$17,000,000.00 (the “**Purchase Price**”), exclusive of Sales Taxes.

2.2 Payment of Purchase Price

The Purchaser will pay the Purchase Price and other consideration for the Residential Lands as follows:

- (a) \$850,000.00 (the “Deposit”) will be paid by the Purchaser to the Purchaser’s Solicitors, in trust, concurrent with the execution and delivery of this Agreement; and
- (b) the balance of the Purchase Price, subject to adjustments (the “Closing Payment”), will be paid in the following amounts, without interest, at the following times, subject to section 6:
 - (i) \$4,000,000.00 on August 31, 2017;
 - (ii) \$4,000,000.00 on July 29, 2018;
 - (iii) \$6,000,000.00 on July 29, 2019; and
 - (iv) \$2,150,000.00 on July 29, 2020.

2.3 Ventana Payment of Instalments

The parties acknowledge and agree that the portion of the Purchase Price set out in section 2.2(b) will be paid as follows:

- (a) the Vendor will as of the dates specified in section 2.2(b) deduct the amounts owing under that section from progress payments to Ventana under a Design Build Agreement between Ventana and the Vendor dated for reference December 22, 2016;
- (b) under a separate agreement, the Purchaser and Ventana will arrange for the payment of amounts set out in section 2.2(b) from the Purchaser to Ventana;
- (c) if for any reason the Vendor does not under paragraph (a) receive the benefit of any amount owing under section 2.2(b) by the date specified in that section, and neither the Purchaser nor Ventana cures this default within 30 days of a notice from the Vendor, the amount becomes a debt due and owing jointly and severally from both the Purchaser and Ventana to the Vendor, and the Vendor may collect the amount by any means, without prejudice to any other rights the Vendor may have in respect of such failure or repudiation by the Purchaser or Ventana.

2.4 Deposit

The Deposit will be held in trust by the Purchaser’s Solicitors at an accredited financial institution. Interest, if any, earned on the Deposit, will be for the credit of the Purchaser, except as otherwise stated in this Agreement. The Deposit will be dealt with as follows:

- (a) the Deposit, together with any interest earned thereon, will be returned to the Purchaser if the Purchaser's Conditions set out in Section 3.1 are not satisfied or waived within the time set out in that section;
- (b) the Deposit, together with any interest earned thereon, will be paid to the Vendor if the Vendor's Conditions set out in section 3.2 are not satisfied or waived within the time set out in that section and where satisfaction of such conditions is solely within the control of the Purchaser;
- (c) the Deposit will be credited on account of the Purchase Price on the Closing Date and any interest earned thereon, will be paid to the Purchaser;
- (d) if the Vendor is not in default under this Agreement and the Purchaser fails to complete the purchase in accordance with this Agreement or if the Purchaser repudiates this Agreement, then, at the Vendor's option and on written notice to the Purchaser, the Vendor may cancel this Agreement and the Deposit will be forfeited to the Vendor without prejudice to any other rights the Vendor may have in respect of such failure or repudiation by the Purchaser; or
- (e) if the Purchaser is not in default under this Agreement and the Vendor fails to complete the sale in accordance with this Agreement or if the Vendor repudiates this Agreement, then the Deposit, with interest accrued thereon, if any, will be refunded to the Purchaser upon demand, without prejudice to any other rights the Purchaser may have in respect of such failure or repudiation by the Vendor.

2.5 Authorization to Vendor's Solicitors

The Vendor and Purchaser hereby irrevocably authorize and direct the Purchaser's Solicitors to hold and pay the Deposit as set out in this Agreement without further notice to, or the consent of, the parties hereto. The Vendor and Purchaser will indemnify and hold harmless the Purchaser's Solicitors for all good faith acts done in furtherance of the foregoing authorization and direction.

Access, information and Representation

2.6 Access

The Purchaser and its authorized representatives, consultants and agents will, upon reasonable prior notice, be given reasonable access to the Residential Lands and may, acting reasonably, carry out such tests, inspections, surveys and construction of a sales centre on Precinct Parcel B as the Purchaser may consider appropriate for the purposes of this Agreement, subject to applicable bylaws and other enactments of or applicable to the City of Port Coquitlam in its capacity as a local government. If the purchase and sale does not complete as set out herein, the Purchaser must remove the sales centre forthwith. The Purchaser will repair any damage to the Residential Lands arising from such entry and use reasonable efforts to restore the Residential Lands to the condition in which they existed prior to such entry and will indemnify and hold the Vendor harmless from any and all liabilities, actions, costs, damages and liens (including

builders' liens) arising from the entry of the Purchaser or its representatives, consultants and agents on the Residential Lands pursuant hereto.

2.7 Authorizations

The Vendor will, at the Purchaser's request, promptly execute and deliver any authorizations reasonably required by the Purchaser to permit statutory or governmental authorities to release information to the Purchaser concerning the Residential Lands or title thereto.

2.8 Representations of the Vendor

The Vendor represents and warrants to the Purchaser that:

- (a) the Vendor has full and sufficient authority to convey legal title and beneficial ownership of the Residential Lands to the Purchaser in accordance with this Agreement;
- (b) the execution, delivery and acceptance of this Agreement and the completion of the within purchase and sale have been duly and validly authorized by all necessary corporate action on the part of the Vendor, and this Agreement constitutes a legal, valid and binding obligation of the Vendor enforceable against the Vendor;
- (c) there are no local improvement charges or special levies against the Residential Lands, nor has the Vendor received any notice of, or is there any reasonable basis for, any proposed local improvement charges or special levies;
- (d) neither the Residential Lands or any part thereof has been expropriated or condemned, nor has the Vendor received any notice of, or is there any reasonable basis for, any proposed expropriation or condemnation
- (e) the Vendor has not failed to disclose to the Purchaser any fact or information material to or concerning the Residential Lands which the Vendor is aware;
- (f) the Vendor does not have any information or knowledge of any facts relating to the Residential Lands which, if known to the Purchaser, might reasonably be expected to deter the Purchaser from completing the within purchase and sale;
- (g) no commission, fee or other charges will be payable by the Purchaser to any sales agent or representative of the Vendor in connection with this Agreement or the resulting purchase and sale of the Residential Lands; and
- (h) there is no litigation or administrative or governmental proceeding or inquiry pending or threatened against or relating to the Vendor or the Residential Lands, nor is there any reasonable basis for any such litigation, proceeding or inquiry.

3. CONDITIONS

3.1 Purchaser's Conditions

The Purchaser's obligation to purchase the Residential Lands is subject to satisfaction or delivery of written waiver by the Purchaser to the Vendor of the following conditions (the "**Purchaser's Conditions**") on or before May 31, 2017:

- (a) the Zoning Bylaw Amendment is adopted by the City of Port Coquitlam Council, except this condition only applies if the Purchaser submits a Zoning Bylaw Amendment application in accordance with the Development Concept by January 31, 2017;
- (b) a development variance permit in relation to the works and services on and adjacent to the Residential Lands is issued by the City of Port Coquitlam Council, except this condition only applies if the Purchaser submits a development variance permit application in accordance with the Development Concept by January 31, 2017;
- (c) the execution and delivery by the City of the Facility Use Agreement, on or after the date of adoption of the Zoning Bylaw Amendment;
- (d) existence of the Precinct parcels shown on the Precinct Plan.

The Purchaser's Conditions are for the sole benefit of the Purchaser and must be satisfied or waived in writing on or before the date specified above, failing which, this Agreement will be terminated. In consideration of the sum of \$10.00, the receipt and sufficiency of which is hereby acknowledged by the Vendor, the Vendor hereby agrees not to terminate this Agreement during the period for satisfaction or waiver of the Purchaser's Conditions.

3.2 Vendor's Conditions

The Vendor's obligation to sell the Residential Lands is subject to delivery of written waiver by the Vendor to the Purchaser of the following conditions (the "**Vendor's Conditions**") on or before the Closing Date:

- (a) the execution and delivery of a development servicing agreement in the form of the Vendor's standard agreement, with the content and accompanying works and services completion and warranty security prescribed by the Vendor's Director of Engineering and Public Works;
- (b) the execution and delivery of the Restaurant Restrictive Covenant, and registration of it in the LTO against the title to Precinct Parcel A;

- (c) the execution and delivery of the Rental Housing Agreement, and registration of it in the LTO against the title to Precinct Parcel B;
- (d) the execution and delivery of the Seniors' Housing Agreement, and registration of it in the LTO against the title to Precinct Parcel A;
- (e) the execution and delivery of an Option Agreement that is generally in keeping with Schedule 7, for each of the Precinct Parcels, and registration of each agreement in the LTO against the title to the related Precinct Parcel.

The Vendor's Conditions are for the sole benefit of the Vendor and must be satisfied or waived in writing on or before the date specified above, failing which, this Agreement will be terminated. In consideration of the sum of \$10.00, the receipt and sufficiency of which is hereby acknowledged by the Purchaser, the Purchaser hereby agrees not to terminate this Agreement during the period for satisfaction or waiver of the Vendor's Conditions.

4. PURCHASER'S DEVELOPMENT

4.1 Vendor's Approvals and Cooperation.

The Vendor, acting reasonably and in its capacity as land owner, and not in respect of City of Port Coquitlam in its capacity as local government, will execute all applications, consents or forms for approval or licenses and permits as may reasonably be requested by the Purchaser as part of its permit applications to develop the Residential Lands. All associated costs, risks and liabilities will be borne by the Purchaser and the Vendor will not incur and will not be obliged to incur any costs, risks, or liabilities with respect thereto. Whenever the Vendor, in its capacity as land owner, and not in respect of City of Port Coquitlam in its capacity as local government, or any of its respective agents, or appointees that the Vendor has power and/or control over, is required or permitted to give or make any approval, consent, decision, or exercise any discretion or make any determination necessary to give effect to this Agreement, the Vendor agree to act, and cause its respective agents or appointees within its power and/or control, to act, in good faith, reasonably and promptly, having regard to its obligations as set out in this Agreement

4.2 Subdivision of the Residential Lands

The Vendor will create the Residential Lands parcels consistent with the Precinct Plan in Schedule 2 at no cost to the Purchaser. Ventana will carry out site remediation of the Residential Lands under section 19 of the Design-Build Supplementary Conditions Agreement made between Ventana and the City and dated for reference December 22, 2016.

5. CLOSING DATE AND PROCEDURE

5.1 Closing Date

The date for completion of the purchase of the Residential Lands will be the Closing Date.

5.2 Vendor's Closing Documents

On or before the Closing Date, the Vendor will deliver to the Purchaser's Solicitors, properly executed and in registrable form where applicable, the following documents:

- (a) Form A – freehold transfer (the “Transfer”), transferring title of the Residential Lands to the Purchaser, free and clear of all liens, charges, claims and encumbrances, save and except the Permitted Encumbrances;
- (b) a statement of adjustments for the purchase and sale of the Residential Lands (the “Statement of Adjustments”);
- (c) discharges in registrable form of all liens, charges, claims and encumbrances not constituting Permitted Encumbrances against the Residential Lands or undertakings from the Vendor's Solicitors, satisfactory to the Purchaser's Solicitors, acting reasonably, to discharge such liens, charges, claims and encumbrances within a reasonable time after the Closing Date;
- (d) the Facility Use Agreement; and
- (e) such further and other documents as the Purchaser's Solicitors, acting reasonably, may require.

5.3 Purchaser's Closing Documents

On or before the Closing Date, the Purchaser will duly execute and deliver to the Vendor's Solicitors the following:

- (a) a certificate satisfactory to the Vendor's Solicitors, acting reasonably, and sufficient to relieve the Vendor from any obligation to collect and remit any Sales Taxes with respect to the sale of the Residential Lands to the Purchaser and an indemnity of the Vendor in respect thereof;
- (b) the Statement of Adjustments;
- (c) duly executed Restaurant Restrictive Covenant for registration in the LTO;
- (d) duly executed Option Agreements for registration in the LTO;

- (e) duly executed Rental and Seniors' Housing Agreements for registration and filing in the LTO;
- (f) duly executed development servicing agreement and security as described in section 3.2(a);
- (g) such further and other documents as the Vendor's Solicitors, acting reasonably, may require;

and the Purchaser will deliver to the Purchaser's Solicitors by wire transfer, bank draft or certified trust account cheque drawn on a Canadian chartered bank in British Columbia payable to the Purchaser's Solicitors, in trust, in an amount equal to the Closing Payment, if any (as adjusted in accordance with the Statement of Adjustments).

5.4 Registration

Following receipt by the Purchaser's Solicitors of the funds referred to in Section 5.3, if any, and of the documents and items referred to in section 5.2 and receipt by the Vendor's Solicitors of the documents referred to in Section 5.3, the Purchaser will cause the Purchaser's Solicitors to submit the Transfer for registration in the LTO, concurrently with any security documents applicable to any mortgage financing arranged by the Purchaser in connection with the purchase of the Residential Lands. If there is Purchaser's mortgage financing, the Purchaser's Solicitors will not submit the Transfer for registration in the LTO until the Purchaser's Solicitors have received confirmation from the solicitors for the Purchaser's mortgagee that, to the best of their knowledge, all conditions for funding have been met except for depositing the security documents for registration and verification that they will constitute charges on the Residential Lands in the ordinary course of completion of that registration (subject only to the Permitted Encumbrances, any charges or encumbrances created by the Purchaser and any charges or encumbrances to be discharged by the Vendor's Solicitors on appropriate undertakings). The Purchaser's Solicitors will undertake to the Vendor's Solicitors that if the Purchase Price is not paid to the Vendor on the Closing Date, they will, upon the written request of the Vendor's Solicitors, forthwith cause the application for registration of the Transfer to be withdrawn and cancelled and will forthwith cause the solicitors for the Purchaser's mortgagee to do the same with respect to the security documents and any other filings made by them with respect to the Residential Lands.

5.5 Closing Procedure

Forthwith following the filings referred to in Section 5.4 and upon the Purchaser's Solicitors, acting reasonably, being satisfied as to the title to the Residential Lands, after conducting a post-submission LTO search of the Residential Lands disclosing only the following:

- (a) the Permitted Encumbrances;

- (b) pending number(s) assigned to the Transfer;
- (c) pending numbers assigned to any security documents applicable to any mortgage financing arranged by the Purchaser in connection with the purchase of the Residential Lands; and
- (d) any other charges and encumbrances approved by the Purchaser;

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 Residential Lands, to deliver to the Vendor's Solicitors by wire transfer, bank draft, solicitor's trust cheque or a certified trust cheque drawn on a Canadian chartered bank, an amount equal to the balance due to the Vendor, if any (evidenced by the Statement of Adjustments). To the extent there is any net credit to the Purchase Price, as evidenced by the Statement of Adjustments, the credit will be applied to reduce the fourth payment to the Vendor on July 29, 2020.

5.6 Purchaser's Obligation to Pay

Despite the closing procedures referred to above, as between the Vendor and the Purchaser, it remains the Purchaser's obligation to pay the Purchase Price (adjusted in accordance with the Statement of Adjustments) to the Vendor on the Closing Date, regardless of whether the Purchaser's Solicitors receive all or any proceeds of any financing, and the failure of the Purchaser to pay the Purchase Price (adjusted in accordance with the Statement of Adjustments) to the Vendor on a Closing Date will constitute a default by the Purchaser under this Agreement.

5.7 Completion of Closing

Registration of all the requisite documents in the LTO on the Closing Date and all matters of payment and delivery of documents by each party to the other in respect of the Closing Date will be deemed to be concurrent requirements of closing.

6. DOCUMENTS, COSTS AND TAXES

6.1 Registration Fees and Property Transfer Tax

The Purchaser will pay the Property Transfer Tax and fees for the registration of the Transfer and any other documents required by the Purchaser to be filed in the LTO in respect of the purchase and sale transaction contemplated by this Agreement.

6.2 Closing Documents

Unless otherwise agreed between the Vendor's Solicitors and the Purchaser's Solicitors, each acting reasonably, the Purchaser's Solicitors will prepare the documents required to be delivered by the parties for the purposes of closing, all of which documents will be delivered for execution

at least 3 Business Days prior to the Closing Date and will be in form approved by the Purchaser's Solicitors and the Vendor's Solicitors, each acting reasonably.

6.3 Cost to Clear Title

The cost of obtaining and registering any documents required to clear title to the Residential Lands of any liens, claims or encumbrances not constituting Permitted Encumbrances will be borne by the Vendor.

6.4 Sales Taxes

The Purchaser is responsible for all Sales Taxes in respect of the purchase and sale of the Residential Lands contemplated herein and will be responsible to account for Sales Taxes in respect thereof in accordance with applicable legislation.

7. POSSESSION

7.1 Possession

The Purchaser will be entitled to vacant possession of the Residential Lands on the Closing Date, immediately following payment of the Purchase Price.

8. ADJUSTMENTS

8.1 Adjustments

Property taxes and similar charges, if applicable, and all other matters relating to the Residential Lands and customarily the subject of adjustment on the sale of comparable lands will be adjusted and pro-rated between the Vendor and the Purchaser as at the Closing Date and the Vendor will bear and pay all expenses and receive all income, if any, related to the Residential Lands accrued in respect of any time prior to the Closing Date and the Purchaser will bear and pay all expenses related to the Residential Lands which accrue in respect of any time from and including the Closing Date. If the Residential Lands are exempt from property taxes and similar charges as of the Closing Date, the Purchaser must pay the Vendor an amount equal to the pro rata amount of property taxes and similar charges that would have been payable if the Residential Lands were not exempt. This amount will be included in the Statement of Adjustments.

9. CONDITION OF LANDS

9.1 Condition of Residential Lands

The Purchaser hereby acknowledges and agrees that:

- (a) the Purchaser is acquiring the Residential Lands on an "as is and where is" basis with no representations or warranties as to its condition, environmentally, geotechnically or otherwise, or its suitability for the Purchaser's purposes; and

- (b) the Purchaser hereby waives any requirement for the Vendor to provide the Purchaser with a site profile under the *Environmental Management Act* (British Columbia).

9.2 No Liability and No Claims

Without limiting section 9.1, the Purchaser covenants and agrees that the Vendor shall have no liability whatsoever, and the Purchaser shall not make any claims against the Vendor in respect of, any Contamination of the Residential Lands (or any other lands owned by the Vendor) or which is due to or the result of any Hazardous Materials being located on the Residential Lands or migrating to or from the Residential Lands before the Closing Date. For the purposes of this Section 9.2, "Hazardous Materials" means any underground storage tanks, any explosive or radioactive materials, pollutants, Contaminants, hazardous, corrosive or toxic substances, special waste or waste of any kind, including, without limitation, compounds known as chlorobiphenyls, petroleum and any other substance or material the storage, manufacture, disposal, treatment, generation, use, transportation, remediation or release into the environment of which is prohibited, controlled, regulated or licensed under Environmental Laws.

10. RISK

10.1 Risk

The Residential Lands will be at the risk of the Vendor up to the time of submission for registration of the Transfer in the LTO, and will be at the risk of the Purchaser thereafter.

11. MISCELLANEOUS

11.1 Tender

Any tender of documents or money may be made upon a party or upon its solicitors and money may be tendered by certified solicitor's cheque or bank draft drawn on a Canadian chartered bank.

11.2 Time of Essence

Time will be of the essence of this Agreement.

11.3 Business Days

In the event that any date established or stipulated herein for performance or for the expiry of a period of time falls upon a day which is not a Business Day, then such date will be deemed to be the next following Business Day.

11.4 Interpretation

The division of this Agreement into articles and sections and the insertion of headings are for convenience of reference only and will not affect the construction or interpretation of this Agreement.

11.5 Notices

Any notice to be given under this Agreement will be in writing and will be validly given if delivered, transmitted by facsimile or email or mailed in British Columbia by prepaid registered post to the parties as follows:

To the Purchaser at:

c/o Quantum Properties Inc.
2200 West Railway Street
Abbotsford, BC V2S 2E2
Attention: Diane Delves
Telephone: 604-854-1201
E-mail: ddelves@quantumproperties.ca

with a copy to:

Kuhn LLP
Legal Counsel
100 – 32160 South Fraser Way
Abbotsford, BC V2T 1W5
Attention: Ian Moes
Fax No.: 604-864-8867
Email: imoes@kuhnco.net

To the Vendor at:

City of Port Coquitlam
2580 Shaughnessy Street
Port Coquitlam, BC V3C 2A8

Attention: Kristen Meersman
Telephone: 604-927-5410
E-mail: meersmank@portcoquitlam.ca

with a copy to:

LIDSTONE & COMPANY
Barristers and Solicitors
Suite 1300 – Sun Tower
128 Pender Street West
Vancouver, B.C. V6B 1R8

Attention: Don Lidstone, Q.C.
Fax No. 604-899-2281
Email: lidstone@lidstone.ca

To Ventana at:

Ventana Construction (Poco) Ltd.

3875 Henning Drive, Burnaby, BC V5C 6N5

Attention: John Sharp
Telephone: (604) 291-9000
E-mail: jsharp@ventanaconstruction.com

with a copy to:

JENKINS, MARZBAN AND LOGAN
Barristers and Solicitors
Vancouver, B.C. V6B 1R8

Attention: David McKenzie

Fax No. (604) 681-0766

Email: dmckenzie@jml.ca

or to such other address, email or facsimile number as a party may advise the other by written notice hereunder. Any notice addressed and provided as aforesaid will be deemed to have been given on the day of delivery or transmission by email or facsimile if a Business Day, and if not a Business Day, then on the next Business Day or if mailed, on the third Business Day following the posting thereof. Notices will not be mailed during the currency of a postal strike, dispute or slowdown, and during such time, notice will only be effective if emailed or transmitted (without a failure notice) or if delivered.

11.6 Entire Agreement

This Purchase and Sale Agreement including its Schedules 1 through 6 constitutes the entire Purchase and Sale Agreement between the parties pertaining to the sale and purchase of the Residential Lands and supersedes all prior agreements, negotiations and discussions, whether oral or written, of the Vendor and the Purchaser. There are no agreements, covenants, representations or warranties, express, implied, statutory, collateral or otherwise, save as set forth herein, including the set-off referred to in section 2.2(b). References to the MOU in this Agreement are made solely for the purposes of referencing definitions therein.

11.7 Amendment in Writing

This Agreement will not be amended except in writing.

11.8 Survival

All representations and warranties, if any, of the Vendor or the Purchaser in this Agreement or in any document delivered in connection herewith will survive the closing of the sale and purchase of the Residential Lands for a period of one year from the Closing Date, after which they will be of no further force or effect except in respect of claims made by either party within such one year period.

11.9 Assignment

This Agreement is not assignable by the Purchaser without the prior written consent of the Vendor, provided that the Purchaser may direct the conveyance of Residential Lands, or a portion of the Residential Lands, to one or more Affiliates of the Purchaser or to Quantum Properties Inc. without the prior written consent of the Vendor. No assignment of this Agreement or the appointment of a nominee or bare trustee will operate to release the Purchaser from any of its obligations under this Agreement.

11.10 Agency and Commission

The Purchaser warrants to the Vendor that the Purchaser has not utilized the services of any real estate agent or salesperson in connection with the purchase or sale of the Residential Lands to whom any fees, commission or compensation would be payable by the Vendor. The Vendor will be solely responsible for any real estate commission payable to any real estate agent that the Vendor has engaged in respect of the sale of the Residential Lands.

11.11 Confidentiality

- (a) The Purchaser will keep the financial terms hereof in strict confidence, except to the extent disclosure is required to be made to the Purchaser's lenders, consultants, agents and others having a need to know.
- (b) This Agreement, and the information it contains, may be the subject of an access to information request made to the Vendor under the *Freedom of Information and Protection of Privacy Act* and the Vendor and the Purchaser agree that the Vendor may be obliged by that enactment to disclose all or part of this Agreement and the information it contains and all or part of any information of the Purchaser supplied to the Vendor in connection with this Agreement, whether or not the Purchaser has expressly stipulated that the information in question is confidential for the purposes of that enactment.

11.12 Costs and Expenses

Each of the parties will bear their own costs, expenses and legal fees incurred or to be incurred in negotiating and preparing this Agreement and otherwise in connection with this transaction.

11.13 References

Wherever the singular or masculine is used in this Agreement, the same will be deemed to include references to the plural, feminine or body corporate or politic, as the context may require.

11.14 Governing Law

This Agreement will be governed by and construed in accordance with the laws of British Columbia and the Vendor and Purchaser hereby attorn to the jurisdiction of the courts of British Columbia.

11.15 Binding Effect

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

11.16 Execution in Counterparts or by Facsimile or Email

This Agreement may be executed and delivered in counterparts and by facsimile transmission or portable document format (PDF) transmission or other electronic means and, if so executed and transmitted, then this Agreement shall be as effective as if the parties had delivered one single executed original Agreement.

IN WITNESS WHEREOF this Agreement has been executed and delivered.

QUANTUM PROPERTIES MONTROSE INC.

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

CITY OF PORT COQUITLAM

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

VENTANA CONSTRUCTION (POCO) CORP.

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

SCHEDULE 1 TO PURCHASE AND SALE AGREEMENT

RESIDENTIAL LANDS

2428 Mary Hill Road

Parcel Identifier: **000-545-481**

Legal Description:

LOT 5 EXCEPT: PART BYLAW 6287, BLOCK "B" DISTRICT LOT 289 GROUP 1 NEW WESTMINSTER DISTRICT PLAN 1954

Parcel Identifier: **000-545-490**

Legal Description:

LOT 6 EXCEPT: PART BYLAW 6287, BLOCK "B" DISTRICT LOT 289 GROUP 1 NEW WESTMINSTER DISTRICT PLAN 1954

2420 Mary Hill Road

Parcel Identifier: **012-424-846**

Legal Description:

LOT 8 EXCEPT: WEST 10.5 FEET (PLAN WITH BYLAW FILED 6287), BLOCK "B" DISTRICT LOT 289 GROUP 1 NEW WESTMINSTER DISTRICT PLAN 1954

Parcel Identifier: **012-424-838**

Legal Description:

LOT 7 EXCEPT: WEST 10.5 FEET (PLAN WITH BYLAW FILED 6287), BLOCK "B" DISTRICT LOT 289 GROUP 1 NEW WESTMINSTER DISTRICT PLAN 1954

2390 Mary Hill Road

Parcel Identifier: **002-113-023**

Legal Description:

LOT 1 EXCEPT: PART DEDICATED ROAD ON PLAN 80566; BLOCK "C" DISTRICT LOT 289 GROUP 1 NEW WESTMINSTER DISTRICT PLAN 1954

2384 Mary Hill Road

Parcel Identifier: **005-110-581**

Legal Description:

LOT 2 EXCEPT: PARTS ON PLAN WITH BYLAW FILED 6287, BLOCK "C" DISTRICT LOT 289 GROUP 1 NEW WESTMINSTER DISTRICT PLAN 1954

2382 Mary Hill Road

Parcel Identifier: **002-932-202**

Legal Description:

LOT 4 EXCEPT: PART ON PLAN 37752; BLOCK "C" DISTRICT LOT 289 GROUP 1 NEW WESTMINSTER DISTRICT PLAN 1954

Parcel Identifier: **002-932-130**

Legal Description:

LOT 3 EXCEPT: PART ON PLAN WITH BY-LAW FILED 6287; BLOCK "C" DISTRICT LOT 289 GROUP 1 NEW WESTMINSTER DISTRICT PLAN 1954

2380 Mary Hill Road

Parcel Identifier: **012-430-706**

Legal Description:

LOT 1 EXCEPT: THE WESTERLY 10.5 FEET; DISTRICT LOT 289 GROUP 1 NEW WESTMINSTER DISTRICT PLAN 1959

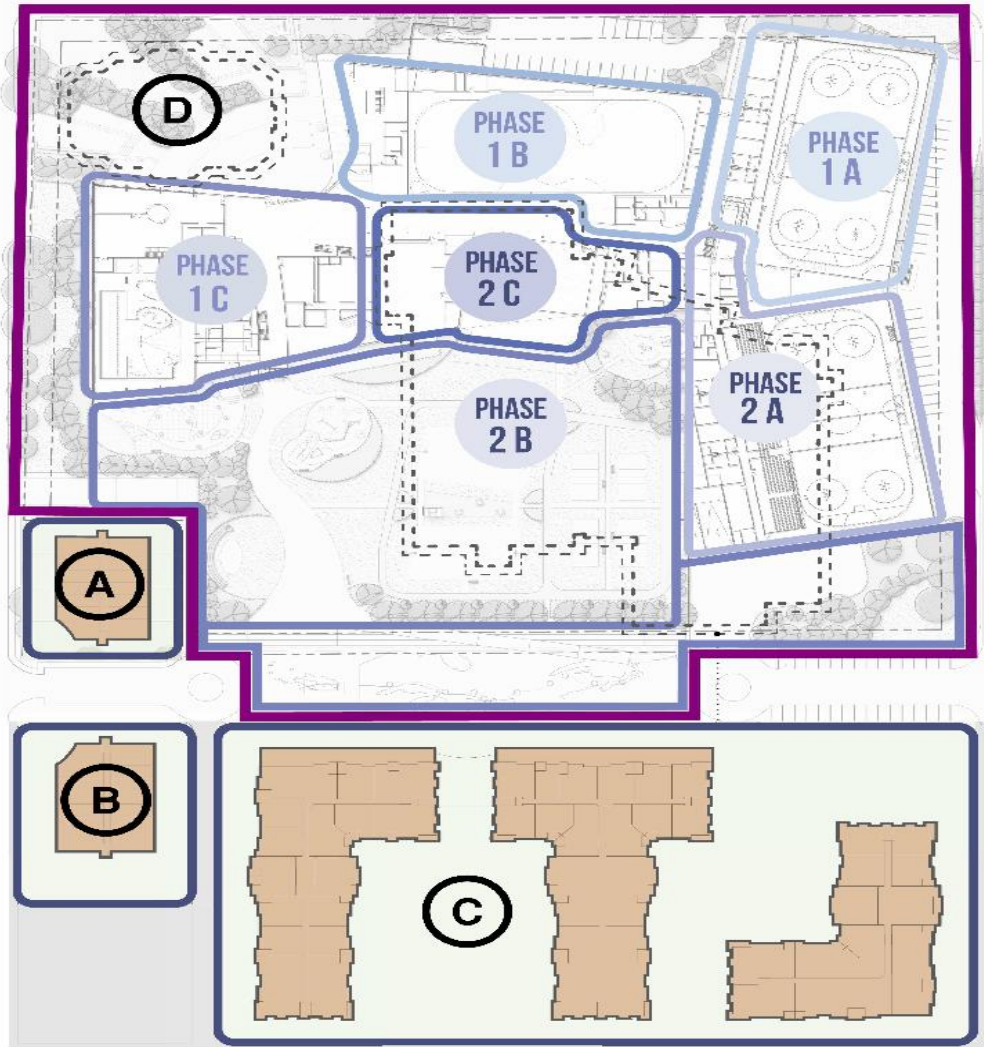
2170 Kelly Ave

Parcel Identifier: **008-501-921**

Legal Description:

LOT 105 DISTRICT LOT 289 GROUP 1 NEW WESTMINSTER DISTRICT PLAN 37752

SCHEDULE 2 TO PURCHASE AND SALE AGREEMENT
PRECINCT PLAN



**SCHEDULE 3 TO PURCHASE AND SALE AGREEMENT
RENTAL HOUSING AGREEMENT**

THIS AGREEMENT dated for reference _____, 2017 affects:

LEGAL DESCRIPTION OF PROPERTY SUBJECT TO THE AGREEMENT:

Parcel Identifier: _____

(“Land”)

AND IS BETWEEN:

(“Owner”)

AND:

CORPORATION OF THE CITY OF PORT COQUITLAM, a municipal corporation under the *Community Charter*, SBC 2003, c. 26 and the *Local Government Act*, RSBC 2015, c. 1 and having offices at 2580 Shaughnessy Street, Port Coquitlam, British Columbia, V3C 2A8

(“City”)

AND:

(“Chargeholder”)

GIVEN THAT:

- A. The Owner is the registered owner of the Land and has applied to the City for rezoning of the Land to permit the construction of a multiple unit residential development, and has consented to the designation of certain lands for Rental Housing Apartment Units as more particularly described in this Agreement;
- B. The City may, pursuant to Section 483(1) of the *Local Government Act* enter into an agreement with an owner of land that includes terms and conditions regarding the occupancy, tenure, availability of Dwellings, as well as regarding rents and lease, sale or share prices that may be charged, and the rates at which these may be increased over time;
- C. The Owner and the City wish to enter into this Agreement to provide for 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 Section 483 of the *Local Government Act*;
- D. The Council of the City of Port Coquitlam has enacted a bylaw under section 483 of the *Local Government Act* to enter into this Agreement;
- E. The Chargeholder is the holder of the Bank Charges described in section 10.1 of this Agreement;

In consideration of good and valuable consideration (the receipt and sufficiency of which is acknowledged by both parties), and in consideration of the promises exchanged below, the Owner and the City covenant and agree as follows:

ARTICLE 1 DEFINITIONS AND INTERPRETATION

- 1.1** Definitions - 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) “**Apartment Unit**” means a Rental Housing Dwelling designated as such in accordance with Article 2 herein to be used, occupied and transferred only in accordance with this Agreement;
 - (c) “**Bank Charges**” means the Bank Charges described in section 10.1 of this Agreement, if any;
 - (d) “**Chargeholder**” means the party identified in section 10.1 of this Agreement;
 - (e) “**Dwelling**” has the meaning given in the City’s *Zoning Bylaw*, as amended;

- (f) “**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;
- (g) “**Lands**” means the lands described in the General Instrument, namely those lands legally described as Parcel Identifier: _____;
- (h) “**LTO**” means the Land Title Office in Vancouver/New Westminister, British Columbia or its successor;
- (i) “**Owner**” means the Transferor described in the General Instrument, namely _____ and any permitted successor or assign, and includes any future or subsequent owner of the Lands or an Apartment Unit;
- (j) “**Permitted Encumbrances**” means exceptions and reservations contained in the original Crown grant and any statutory rights of way or other encumbrances in favour of the City;
- (k) “**Priority Agreement**” means the Priority Agreement detailed in Article 10 of this Agreement;
- (l) “**Rental Housing**” means an Apartment Unit restricted to residence, occupancy and use only by a tenant;
- (m) “**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*; and
- (n) “**City**” means the City of Port Coquitlam or any employee, contractor, agent, delegate or assignee designated by City Council to act on its behalf with respect to this Agreement or any rights or powers granted to the City hereunder.

1.2 Interpretation - 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 Section 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 Eligible Tenants, 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”.

1.3 Purpose of Agreement - The Owner and the City agree that:

- (a) this Agreement is intended to serve the public interest by restricting occupancy of any building on the Lands to Rental Housing;
- (b) damages are not an adequate remedy to the City in respect of any breach of this Agreement by the Owner, such that the Owner agrees the City will be entitled to an order for specific performance, injunction or other specific relief respecting any breach of this Agreement by the Owner and to legal costs on a solicitor and client basis.

ARTICLE 2
LAND USE RESTRICTIONS

2.1 Land Use Restrictions – The Owner covenants and agrees with the City that:

- (a) the Lands must be used only in accordance with this Agreement;
- (b) the Owner will at all times ensure that the Lands are 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 the City and all federal, provincial, municipal or local laws, statutes or regulations relating to environmental matters, including all rules, regulations, policies, guidelines, criteria or the like promulgated under or pursuant to any such laws;
- (c) the Owner will do everything necessary, at the Owner's expense, to ensure that this Agreement will be registered against title to the Lands and that a notice under Section 483(5) of the *Local Government Act* will be filed on the title to the Lands at the LTO;
- (d) the Owner will not apply for a building permit for any construction or development on the Lands unless and until the Owner complies with the requirements of this Agreement;
- (e) despite any other provision of this Agreement or any City enactment, a building in which an Apartment Unit for Rental Housing is located shall not be Subdivided or strata titled under the *Strata Property Act*.

**ARTICLE 3
OWNERSHIP DWELLINGS
OCCUPATION AND TRANSFER RESTRICTIONS**

3.1 Occupation and Transfer Restrictions – The City and the Owner agree as follows:

- (a) **Notification of this Agreement** – The Owner of the parcel of land on which the required Rental Housing Apartment Units are located must disclose in every purchase and sale agreement the existence of this Agreement and the restrictions applicable to the parcel and the Apartment Unit.

3.2 Mortgages and Mortgage Insurers – In the event that a building containing Rental Housing Apartment Unit is subject to a mortgage or charge in favour of a lender insured by a mortgage insurer, as further defined in Appendix 1, then the following provisions shall apply:

- (a) the Owner of the building shall fully comply with all terms and obligations of the mortgage or charge, subject to the terms of this Agreement;

- (b) the Owner shall immediately provide the City with written notice if the Owner is in default of any of the terms of the mortgage or charge; and
- (c) the terms of Appendix 1 shall govern.

3.3 Application of Agreement - The Owner acknowledges and agrees that this Agreement will apply to the entire Lands where the building containing Apartment Units is located.

3.4 Owner's Duty to Comply – The City may provide written notice to the Owner of any matter involving a failure by the Owner to comply with this Agreement and upon receipt of such notice, the Owner shall take all necessary steps at its own expense to bring itself back into compliance with this Agreement. Any failure or inability by the Owner to comply with this Agreement within thirty (30) days of receiving notice from the City shall constitute a default of this Agreement and shall entitle the City to exercise any of its rights in respect such default under this Agreement, including its rights under Article 6.

**ARTICLE 4
ADMINISTRATION OF THIS AGREEMENT**

4.1 City to Administer - Except as otherwise provided in this Agreement, the City may monitor, administer, enforce and implement the terms of this Agreement.

4.2 City Inquiries - The Owner hereby irrevocably authorizes the City to make such inquiries as it considers necessary with the Owner, any permitted strata corporation or otherwise in order to confirm that the Owner and any occupiers of any part of the Lands are complying with this Agreement, and irrevocably authorizes and directs the recipient of the request for information from the City to provide such information to the City.

**ARTICLE 5
INTENTIONALLY DELETED**

**ARTICLE 6
DEFAULT AND REMEDIES**

6.1 Specific Performance - The Owner and all subsequent Owners acknowledge that in the event of a breach of this Agreement, in addition to any damages that may have occurred as a result of the breach, the City is entitled to an order for specific performance of one or more of the obligations set out in the Agreement and shall also be entitled to its legal costs on a solicitor and client basis.

**ARTICLE 7
INTENTIONALLY DELETED**

**ARTICLE 8
SECTION 219 COVENANT**

- 8.1** Agreement constitutes Section 219 Covenant - The Owner agrees, pursuant to section 219 of the *Land Title Act*, that:
- (a) the terms and conditions of this Agreement constitute a covenant in respect of the use of the Lands and annexed to and running with the Lands; and
 - (b) the City may register this Agreement in the Land Title Office against title to the Lands or any Apartment Unit as a covenant pursuant to section 219 of the *Land Title Act*.

**ARTICLE 9
MISCELLANEOUS**

- 9.1** Housing Agreement - The Owner acknowledges and agrees that:
- (a) this Agreement constitutes a Housing Agreement entered into under Section 483 of the *Local Government Act*; and
 - (b) the City may register a notice of Housing Agreement under Section 483 of the *Local Government Act* in the LTO against title to the Lands or any Housing Unit.
- 9.2** Modification - This Agreement may be modified or amended from time to time, by bylaw duly passed by the Council of the City, and provided the amended Agreement is signed by the City and the Owner.
- 9.3** Indemnity - The Owner will indemnify and save harmless the City and each of its elected officials, officers, directors, 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, agents, contractors or other persons for whom at law the Owner is responsible relating to this Agreement;

- (b) the Owner's construction, maintenance, ownership, lease, operation, management or financing of the Lands or any Apartment Unit;
- (c) without limitation, any legal or equitable wrong on the part of the Owner or any breach of this Agreement by the Owner.

9.4 Release - The Owner by this Agreement releases and forever discharges the City and each of its elected officials, officers, directors, 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 or which would or could not occur but for the:

- (a) ownership, lease, operation or management of the Lands or any Apartment Unit under this Agreement; and
- (b) the exercise by the City of any of its rights under this Agreement or an enactment.

9.5 Municipalities Powers Unaffected - This Agreement does not:

- (a) affect or limit the discretion, rights, duties or powers of the City under any enactment or at common law, including in relation to the use or subdivision of the Lands;
- (b) impose on the City 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 Lands; or
- (d) relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Lands.

9.6 Agreement for Benefit of City only - The Owner and the City agree that:

- (a) this Agreement is entered into only for the benefit of the City;
- (b) this Agreement is not intended to protect the interests of the Owner, any tenant, or any future owner, lessee, occupier or use of the Lands, the Apartment Unit or any portion thereof;
- (c) the City 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.
- (d) Upon expiry of this Agreement, the City at the written request of the owner, will execute a release and discharge of the agreement at the cost of the City.

9.7 No Public Law Duty - Where the City is required or permitted by this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination or give its consent, the Owner agrees that the City is under no public law duty of fairness or natural justice in that regard and agrees that the City may do any of those things in the same manner as if it were a private party and not a public body.

9.8 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 the City addressed:

To: City of Port Coquitlam, Corporate Officer
2580 Shaughnessy Street,
Port Coquitlam, British Columbia V3C 2A8

And to: the Owner:

or to the most recent postal address provided in a written notice given by each of the parties to the other or recorded on title at the LTO. Any notice which is delivered is to be considered to have been given on the first day after it is dispatched for delivery.

9.9 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.

9.10 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.

9.11 Waiver - All remedies of the City will be cumulative and may be exercised by the City 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 the City exercising any or all remedies will not prevent the later exercise of any remedy for the same breach of any similar or different breach.

9.12 Sole Agreement - This Agreement, and any documents signed by the Owners contemplated by this Agreement, represent the whole agreement between the City and the Owner respecting the use and occupation of the Housing Units, and there are no warranties, representations, conditions or collateral agreements made by the City except as set forth in this Agreement.

- 9.13** Further Assurance - Upon request by the City the Owner will forthwith do such acts and execute such documents as may be reasonably necessary in the opinion of the City to give effect to this Agreement.
- 9.14** Covenant Runs with the Lands - This Agreement burdens and runs with the Lands 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 Lands.
- 9.15** 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 Lands.
- 9.16** Equitable Remedies - The Owner acknowledges and agrees that damages would be an inadequate remedy for the City for breach of this Agreement 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.
- 9.17** No Joint Venture - Nothing in this Agreement will constitute the Owner as the agent, joint venture, or partner of the City or give the Owner any authority to bind the City in any way.
- 9.18** 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.
- 9.19** 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.
- 9.20** Real Estate Services Act – For greater certainty, nothing in this Agreement prevents the Owner from retaining a real estate service provider licensed under the *Real Estate Services Act* in respect of a building containing Rental Housing.

ARTICLE 10 PRIORITY AGREEMENT

- 10.1** The Bank Charges - The parties acknowledge and agree that the Chargeholder is the holder of a mortgage encumbering the Lands which was registered in the LTO under number _____ and an Assignment of Rents which was registered in the LTO under number _____ (collectively, the “**Bank Charges**”).

10.2 Priority Agreement - The Chargeholder, being the holder of the Bank Charges, by signing the Form C General Instrument attached hereto as Part I, in consideration of the payment of Ten Dollars (\$10.00) and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged and agreed to by the Chargeholder) hereby consents to the granting of this Agreement including the Housing Agreement and Section 219 Covenant, and subject to section 9.20 above, hereby covenants that this Agreement shall bind the Chargeholder with respect to the Lands and shall rank in priority upon the Lands over the Bank Charges as if the Agreement had been registered prior to the Bank Charges and prior to the advance of any monies pursuant to the Bank Charges. The grant of priority is irrevocable, unqualified and without reservation or limitation.

IN WITNESS WHEREOF, the parties hereby affixed their signatures on the day and year first above written.

**THE CORPORATION OF
THE CITY OF PORT COQUITLAM** by its
authorized signatories:

Mayor:

Corporate Officer:

_____, by its
authorized signatories:

_____, by its
authorized signatories:

**SCHEDULE 4 TO PURCHASE AND SALE AGREEMENT
SENIORS' HOUSING AGREEMENT**

THIS AGREEMENT dated for reference _____, 2017 affects:

LEGAL DESCRIPTION OF PROPERTY SUBJECT TO THE AGREEMENT:

Parcel Identifier: _____

("Land")

AND IS BETWEEN:

("Owner")

AND:

CORPORATION OF THE CITY OF PORT COQUITLAM, a municipal corporation under the *Community Charter*, SBC 2003, c. 26 and the *Local Government Act*, RSBC 2015, c. 1 and having offices at 2580 Shaughnessy Street, Port Coquitlam, British Columbia, V3C 2A8

("City")

AND:

("Chargeholder")

GIVEN THAT:

- A. The Owner is the registered owner of the Land and has applied to the City for rezoning of the Land to permit the construction of a multiple unit residential

development, and has consented to the designation of certain lands for Seniors' Housing Apartment Units as more particularly described in this Agreement;

- B. The City may, pursuant to Section 483(1) of the *Local Government Act* enter into an agreement with an owner of land that includes terms and conditions regarding the occupancy, tenure, availability of Dwellings, as well as regarding rents and lease, sale or share prices that may be charged, and the rates at which these may be increased over time;
- C. The Owner and the City wish to enter into this Agreement to provide for 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 Section 483 of the *Local Government Act*;
- D. The Council of the City of Port Coquitlam has enacted a bylaw under section 483 of the *Local Government Act* to enter into this Agreement; and
- E. The Chargeholder is the holder of the Bank Charges described in section 10.1 of this Agreement;

In consideration of good and valuable consideration (the receipt and sufficiency of which is acknowledged by both parties), and in consideration of the promises exchanged below, the Owner and the City covenant and agree as follows:

ARTICLE 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions - 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) “**Apartment Unit**” means a Dwelling designated as such in accordance with Article 2 herein to be used, occupied and transferred only in accordance with this Agreement;
- (c) “**Bank Charges**” means the Bank Charges described in section 10.1 of this Agreement, if any;
- (d) “**Chargeholder**” means the party identified in section 10.1 of this Agreement;

- (e) “**Dwelling**” has the meaning given in the City’s *Zoning Bylaw*, as amended;
- (f) “**General Instrument**” means the Form C under the Land Title (Transfer Forms) Regulations, as amended, and all appendices and addenda to the Form C charging the Land and citing these Standard Charge Terms;
- (g) “**Lands**” means the lands described in the General Instrument and any part, namely those lands legally described as Parcel Identifier: _____, including a building or a portion of a building, into which said land is Subdivided;
- (h) “**LTO**” means the Land Title Office in Vancouver/New Westminister, British Columbia or its successor;
- (i) “**Owner**” means the Transferor described in the General Instrument, namely _____ and any permitted successor or assign, and includes any future or subsequent owner of the Lands or an Apartment Unit;
- (j) “**Permitted Encumbrances**” means exceptions and reservations contained in the original Crown grant and any statutory rights of way or other encumbrances in favour of the City;
- (k) “**Priority Agreement**” means the Priority Agreement detailed in Article 10 of this Agreement;
- (l) “**Seniors’ Housing**” means an Apartment Unit restricted to residence, occupancy and use only by persons aged 55 or older;
- (m) “**Statutory Declaration**” means a Statutory Declaration in the form attached as Appendix 1 to this Agreement;
- (n) “**Strata Corporation**” means a strata corporation established in accordance with the *Strata Property Act*;
- (o) “**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*; and

- (p) “**City**” means the City of Port Coquitlam or any employee, contractor, agent, delegate or assignee designated by City Council to act on its behalf with respect to this Agreement or any rights or powers granted to the City hereunder.

1.2 Interpretation - 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 Section 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 Eligible Tenants, 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”.

1.3 Purpose of Agreement - The Owner and the City agree that:

- (a) this Agreement is intended to serve the public interest by restricting occupancy of any building on the Lands to Seniors' Housing;
- (b) damages are not an adequate remedy to the City in respect of any breach of this Agreement by the Owner, such that the Owner agrees the City will be entitled to an order for specific performance and an injunction or other specific relief respecting any breach of this Agreement by the Owner and to legal costs on a solicitor and client basis.

1.4 Appendices – The following appendices are attached and form part of this Agreement:

- (a) Appendix 1 – Statutory Declaration; and
- (b) Appendix 2 – Mortgage and Mortgage Insurer Agreement Terms.

ARTICLE 2
LAND USE RESTRICTIONS

2.1 Land Use Restrictions – The Owner covenants and agrees with the City that:

- (a) the Lands must be used only in accordance with this Agreement;
- (b) the Owner will at all times ensure that the Lands are 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 the City and all federal, provincial, municipal or local laws, statutes or regulations relating to environmental matters, including all rules, regulations, policies, guidelines, criteria or the like promulgated under or pursuant to any such laws;
- (c) the Owner will do everything necessary, at the Owner's expense, to ensure that this Agreement will be registered against title to the Lands and that a notice under Section 483(5) of the *Local Government Act* will be filed on the title to the Lands at the LTO; and
- (d) the Owner will not apply for a building permit for any construction or development on the Lands unless and until the Owner complies with the requirements of this Agreement.

ARTICLE 3
OWNERSHIP DWELLINGS
OCCUPATION AND TRANSFER RESTRICTIONS

3.1 Occupation and Transfer Restrictions – The City and the Owner agree as follows:

- (a) **Notification of this Agreement** – The Owner of any part of the Lands on which any of the required Seniors' Housing Apartment Units are located must disclose in every purchase and sale agreement and every tenancy agreement for any part of the Lands the existence of this Agreement and the restrictions applicable to the Apartment Unit, ensure the purchase and sale agreement or tenancy agreement is made conditional upon complying with subsection 3.1(b) of this Agreement and provide the prospective purchaser with a copy of this Agreement;
- (b) **Occupier Criteria** – The Owner agrees that the Owner of the Apartment Unit must not occupy any Seniors' Housing Apartment Unit unless the Owner is eligible for Seniors' Housing;
- (c) at least seven (7) days prior to the occupation of a Seniors' Housing Apartment Unit by an individual, the Owner of the Apartment Unit who is renting to the individual or who is transferring title to the individual must collect and store for a period of two years a Statutory Declaration sworn by the individual under oath before a commissioner for taking affidavits in British Columbia, containing all of the information required to complete the Statutory Declaration;
- (d) upon written request by the City, the Owner must provide the City with a copy of the Statutory Declaration.
- (e) **Compliance with all bylaws of Strata Corporation** – The Owner of a Seniors' Housing Apartment Unit shall:
 - (i) comply with all bylaws and regulations of the Strata Corporation and shall immediately inform the City in writing if it is in breach of any of those bylaws and regulations;
 - (ii) permit the Strata Corporation to notify the City of any breaches by the Owner of the bylaws or regulations of the Strata Corporation; and
 - (iii) permit the City to perform any obligations of the Owner if the Owner is in default and to indemnify the City for its costs in accordance with section 9.3 of this Agreement;
- (f) **Insurance** – an Owner of an Apartment Unit must:

- (i) maintain insurance on the Apartment Unit for damage or loss associated with fire with an extended coverage endorsement including water, smoke, earthquake, flood, collapse and such other insurance risks against which a prudent Owner would protect itself in an amount equal to the full replacement value thereof;
 - (ii) obtain from the insurer under such policy, an undertaking to notify the City in writing at least ten (10) days prior to any cancellation or termination thereof; and
 - (iii) upon written request by the City, provide the City with certificates of insurance evidencing the policy in effect from time to time.
- (g) **Applies to all Owners** – For clarity, the restrictions in this section 3.1 shall apply to an Owner who acquires an interest in a Seniors’ Housing Apartment Unit as a member of a household every member of which qualifies as an eligible occupier.

3.2 Mortgages and Mortgage Insurers – In the event that an Apartment Unit is subject to a mortgage or charge in favour of a lender insured by a mortgage insurer, as further defined in Appendix 2, then the following provisions shall apply:

- (a) the Owner shall fully comply with all terms and obligations of the mortgage or charge, subject to the terms of this Agreement;
- (b) the Owner shall immediately provide the City with written notice if the Owner is in default of any of the terms of the mortgage or charge; and
- (c) the terms of Appendix 2 shall govern.

3.3 Application of Agreement - The Owner acknowledges and agrees that this Agreement will apply to the entire Lands where the Apartment Unit is located.

3.5 Owner’s Duty to Comply – The City may provide written notice to the Owner of any matter involving a failure by the Owner or the Owner’s household to comply with this Agreement and upon receipt of such notice, the Owner shall take all necessary steps at its own expense to bring itself back into compliance with this Agreement. Any failure or inability by the Owner to comply with this Agreement within thirty (30) days of receiving notice from the City shall constitute a default of this Agreement and shall entitle the City to exercise any of its rights in respect such default under this Agreement, including its rights under Article 6.

**ARTICLE 4
ADMINISTRATION OF THIS AGREEMENT**

- 4.1 City to Administer - Except as otherwise provided in this Agreement, the City may monitor, administer, enforce and implement the terms of this Agreement.
- 4.2 City Inquiries - The Owner hereby irrevocably authorizes the City to make such inquiries as it considers necessary with the Owner, any strata corporation or otherwise in order to confirm that the Owner and any occupiers of any part of the Lands are complying with this Agreement, and irrevocably authorizes and directs the recipient of the request for information from the City to provide such information to the City.

**ARTICLE 5
INTENTIONALLY DELETED**

**ARTICLE 6
DEFAULT AND REMEDIES**

- 6.1 Specific Performance - The Owner and all subsequent Owners acknowledge that in the event of a breach of this Agreement, in addition to any damages that may have occurred as a result of the breach, the City is entitled to an order for specific performance of one or more of the obligations set out in the Agreement and shall also be entitled to its legal costs on a solicitor and client basis.

**ARTICLE 7
INTENTIONALLY DELETED**

**ARTICLE 8
SECTION 219 COVENANT**

- 8.1 Agreement constitutes Section 219 Covenant - The Owner agrees, pursuant to section 219 of the *Land Title Act*, that:
- (a) the terms and conditions of this Agreement constitute a covenant in respect of the use of the Lands and annexed to and running with the Lands; and
 - (b) the City may register this Agreement in the Land Title Office against title to the Lands or any Apartment Unit as a covenant pursuant to section 219 of the *Land Title Act*.

**ARTICLE 9
MISCELLANEOUS**

- 9.1** Housing Agreement - The Owner acknowledges and agrees that:
- (a) this Agreement constitutes a Housing Agreement entered into under Section 483 of the *Local Government Act*; and
 - (b) the City may register a notice of Housing Agreement under Section 483 of the *Local Government Act* in the LTO against title to the Lands or any Housing Unit.
- 9.2** Modification - This Agreement may be modified or amended from time to time, by bylaw duly passed by the Council of the City, and provided the amended Agreement is signed by the City and the Owner.
- 9.3** Indemnity - The Owner will indemnify and save harmless the City and each of its elected officials, officers, directors, 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, agents, contractors or other persons for whom at law the Owner is responsible relating to this Agreement;
 - (b) the Owner's construction, maintenance, ownership, lease, operation, management or financing of the Lands or any Apartment Unit;
 - (c) without limitation, any legal or equitable wrong on the part of the Owner or any breach of this Agreement by the Owner.
- 9.4** Release - The Owner by this Agreement releases and forever discharges the City and each of its elected officials, officers, directors, 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 or which would or could not occur but for the:
- (a) ownership, lease, operation or management of the Lands or any Apartment Unit under this Agreement; and
 - (b) the exercise by the City of any of its rights under this Agreement or an enactment.
- 9.5** Municipalities Powers Unaffected - This Agreement does not:

- (a) affect or limit the discretion, rights, duties or powers of the City under any enactment or at common law, including in relation to the use or subdivision of the Lands;
- (b) impose on the City 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 Lands; or
- (d) relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Lands.

9.6 Agreement for Benefit of City only - The Owner and the City agree that:

- (a) this Agreement is entered into only for the benefit of the City;
- (b) this Agreement is not intended to protect the interests of the Owner, any tenant, or any future owner, lessee, occupier or use of the Lands, the Apartment Unit or any portion thereof;
- (c) the City 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.
- (d) Upon expiry of this Agreement, the City at the written request of the owner, will execute a release and discharge of the agreement at the cost of the City.

9.7 No Public Law Duty - Where the City is required or permitted by this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination or give its consent, the Owner agrees that the City is under no public law duty of fairness or natural justice in that regard and agrees that the City may do any of those things in the same manner as if it were a private party and not a public body.

9.8 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 the City addressed:

To: City of Port Coquitlam, Corporate Officer
 2580 Shaughnessy Street,
 Port Coquitlam, British Columbia V3C 2A8

And to: the Owner:

or to the most recent postal address provided in a written notice given by each of the parties to the other or recorded on title at the LTO. Any notice which is delivered is to be considered to have been given on the first day after it is dispatched for delivery.

- 9.9** 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.
- 9.10** 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.
- 9.11** Waiver - All remedies of the City will be cumulative and may be exercised by the City 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 the City exercising any or all remedies will not prevent the later exercise of any remedy for the same breach of any similar or different breach.
- 9.12** Sole Agreement - This Agreement, and any documents signed by the Owners contemplated by this Agreement, represent the whole agreement between the City and the Owner respecting the use and occupation of the Housing Units, and there are no warranties, representations, conditions or collateral agreements made by the City except as set forth in this Agreement.
- 9.13** Further Assurance - Upon request by the City the Owner will forthwith do such acts and execute such documents as may be reasonably necessary in the opinion of the City to give effect to this Agreement.
- 9.14** Covenant Runs with the Lands - This Agreement burdens and runs with the Lands 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 Lands.
- 9.15** 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 Lands.
- 9.16** Equitable Remedies - The Owner acknowledges and agrees that damages would be an inadequate remedy for the City for breach of this Agreement 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.

- 9.17 No Joint Venture - Nothing in this Agreement will constitute the Owner as the agent, joint venture, or partner of the City or give the Owner any authority to bind the City in any way.
- 9.18 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.
- 9.19 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.
- 9.20 Real Estate Services Act – For greater certainty, nothing in this Agreement prevents the Owner from retaining a real estate service provider licensed under the *Real Estate Services Act* in respect of an Apartment Unit.

ARTICLE 10
PRIORITY AGREEMENT

- 10.1 The Bank Charges - The parties acknowledge and agree that the Chargeholder is the holder of a mortgage encumbering the Lands which was registered in the LTO under number _____ and an Assignment of Rents which was registered in the LTO under number _____ (collectively, the “**Bank Charges**”).
- 10.2 Priority Agreement - The Chargeholder, being the holder of the Bank Charges, by signing the Form C General Instrument attached hereto as Part I, in consideration of the payment of Ten Dollars (\$10.00) and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged and agreed to by the Chargeholder) hereby consents to the granting of this Agreement including the Housing Agreement and Section 219 Covenant, and subject to section 9.20 above, hereby covenants that this Agreement shall bind the Chargeholder with respect to the Lands and shall rank in priority upon the Lands over the Bank Charges as if the Agreement had been registered prior to the Bank Charges and prior to the advance of any monies pursuant to the Bank Charges. The grant of priority is irrevocable, unqualified and without reservation or limitation.

IN WITNESS WHEREOF, the parties hereby affixed their signatures on the day and year first above written.

THE CORPORATION OF
THE CITY OF PORT COQUITLAM by its
authorized signatories:

Mayor:

Corporate Officer:

_____, by its
authorized signatories:

_____, by its
authorized signatories:

APPENDIX 1

STATUTORY DECLARATION

**IN THE MATTER OF A
HOUSING AGREEMENT BETWEEN
THE CITY OF PORT COQUITLAM
AND**

(the “**Housing Agreement**”)

TO WITNESS:

I, _____ of _____, British Columbia,
[Print name] [Address]

DO SOLEMNLY DECLARE THAT:

1. This declaration is made with respect to the Dwelling municipally described as _____, Port Coquitlam, British Columbia and legally described as PID: _____ (the “Unit”).
2. I am [*initial one of the following*] the occupier of the Unit and have reached the age of 55 or older, and make this declaration to the best of my personal knowledge and believe the statements in this declaration are true.
3. This declaration is made pursuant to the Housing Agreement registered against title to the Unit (the “Housing Agreement”).
4. I have received and reviewed a copy of the Housing Agreement and acknowledge that the terms and definitions in the Housing Agreement also apply to this declaration.
5. The names of all persons in my household who occupy the Unit are as follows and each has reached the age of 55 or older:

[Insert names and addresses of all occupants of Unit]

SCHEDULE 5 TO PURCHASE AND SALE AGREEMENT

RESTAURANT RESTRICTIVE COVENANT

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TERMS OF INSTRUMENT – PART 2

SECTION 219 COVENANT

THIS AGREEMENT dated for reference the ____ day of _____, 201_

BETWEEN:

(the “Owner”)

AND:

CITY OF PORT COQUITLAM, a municipality incorporated under the *Local Government Act*, RSBC 2015, c. 1 and having its office at 2580 Shaughnessy Street, Port Coquitlam, BC V3C 2A8

(the “City”)

WHEREAS:

- A. The Owner is the registered owner in fee simple of PID: _____, Lot ____, _____, Plan _____ (the “Lands”);
- B. The Owner has entered into a Purchase and Sale Agreement with the City dated for reference December 22, 2016 to purchase the Lands herein defined;
- C. Under the terms of the Purchase and Sale Agreement, the Owner is required to enter into this Section 219 Covenant to ensure there is a restaurant on the Lands herein defined and that it is open to the public; and
- D. Section 219 of the *Land Title Act*, RSBC 1996, c. permits a covenant of a negative or positive nature to be registered against the title to the land subject to the covenant and is enforceable against the covenantor and the successors in title of the covenantor even if the covenant is not annexed to land owned by the covenantee;

NOW THEREFORE in consideration of the sum of one dollar (\$1.00) now paid by the City to the Owner (the receipt and sufficiency whereof the Owners hereby acknowledge) the Owners grant to the City this Covenant pursuant to S. 219 of the *Land Title Act* on the terms and conditions herein.

1. The Owner covenants and agrees that:
 - (a) it shall design and build a restaurant (the "Restaurant") on the Lands;
 - (b) the Restaurant shall be built in accordance with all municipal bylaws and other applicable enactments on or before the date the City grants an occupancy permit for a building on the Lands;
 - (c) upon completion of construction of the Restaurant in accordance with subsection 1(b), the Restaurant will be open to the public except, where the Owner is acting reasonably, in respect of private function that may be held in the Restaurant from time to time.
2. The Owner shall comply with all requirements of this Agreement at its own cost and expense.
3. The Owner covenants and agrees to obtain and keep in force insurance for covering the City and the Owner (without any rights of cross-claim or subrogation against the City) against claims for personal injury, death or property damage arising out of any use or enjoyment of , property damage or third party or public liability claims arising from any accident or occurrence in respect of the Restaurant or this Agreement in an amount of not less than \$5,000,000.00 and in form and substance acceptable to the City which amount may be increased during the term of this Agreement at the request of the City exercising its reasonable discretion.
4. The Owner hereby agrees to indemnify, release and save harmless the City and its elected officials, servants, employees and agents (the "City Personnel") from and against all damages, losses, costs, actions, causes of action, claims, demands, builders liens, liabilities, expenses, indirect or consequential damages (including loss of use and damages arising out of delays) which may arise or accrue:
 - (a) by reason of any negligent act or omission or willful misconduct of the Owner in connection with the exercise of any of the rights, obligations or responsibilities of the Owner under this Agreement;
 - (b) by reason of any default in the due observance and performance of the obligations or responsibilities of the Owner under this Agreement; or
 - (c) that arise out of, or would not have been incurred but for the provisions of this Agreement.

This release and indemnity will survive termination of this Agreement and this release and indemnity constitutes an integral part of the charge granted hereby.

5. The Owner hereby further acknowledges, agrees and covenants with the City pursuant to Section 219 of the Land Title Act as follows:

- (a) the City or City Personnel are authorized to enter the Lands to inspect the Lands and any work undertaken thereon with respect to the covenants contained herein;
 - (b) if the Owner Owners in the observance and performance of any obligations set out in Paragraph 1 of this Agreement and such Owner is not remedied within thirty (30) days after the City has given notice to the Owner specifying the Owner and requesting that it be cured, the City may remedy the Owner and seek reimbursement from the Owner for all of its costs incurred and, until paid, the costs shall form a charge against the Lands that are subject to this Agreement; and
 - (c) the City may, but is not required to enforce the covenants contained herein by means of injunctive or other proceedings, and unless otherwise agreed, in the event of obtaining an order or otherwise securing the enforcement of the Owner's covenants, the City's costs of obtaining any relief it deems reasonably necessary to enforce such covenants against the Owner shall be collectible from the Owner by the City on a solicitor and client basis and, until paid, shall form a charge against the Lands that are subject to this Agreement.
6. The rights given to the City by this Agreement are permissive only and nothing in this Agreement imposes any legal duty of any kind on the City to anyone, or obliges the City to enforce this Agreement, to perform any act or to incur any expense in respect of this Agreement, except that nothing in this section shall affect the contractual rights and obligations of the parties hereto under this Agreement.
7. This Agreement shall restrict use of the Land in the manner provided herein notwithstanding any right or permission to the contrary contained in any bylaw of the City.
8. This Agreement does not
- (a) affect or limit the discretion, rights or powers of the City under any enactment (as defined in the Interpretation Act, on the reference date of this Agreement) or at common law, including in relation to the use or subdivision of the Land;
 - (b) affect or limit any enactment relating to the use or subdivision of the Land, or
 - (c) relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Land,
- and the Owner covenants and agrees to comply with all such enactments with respect to the Land.
9. Every obligation and covenant of the Owner in this Agreement constitutes both a contractual obligation and a covenant granted under s.219 of the Land Title Act in respect of the Land and this Agreement burdens the Land and runs with it and binds the successors in title to the Land. This Agreement burdens and charges all of the Land and any parcel into which the Land is subdivided by any means and any parcel into which the Land is consolidated.

10. An alleged waiver of any breach of this Agreement is effective only if it is an express waiver in writing of the breach in respect of which the waiver is asserted. A waiver of a breach of this Agreement does not operate as a waiver of any other breach of this Agreement.
11. If any part of this Agreement is held to be invalid, illegal or unenforceable by a court having the jurisdiction to do so, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that holding or by the severance of that part.
12. This Agreement binds the parties to it and their respective successors, heirs, executors and administrators.
13. The parties hereto shall execute and do all such further deeds, acts, things and assurances that may be reasonably required to carry out the intent of this Agreement.
14. Time is of the essence of this Agreement.
15. This Agreement is not intended to create a partnership, joint venture, or agency between the Owner and the City.
16. Any notice or other communication required or contemplated to be given or made by any provision of this Agreement must be given or made in writing and delivered personally (and if so must be deemed to be received when delivered if delivered on a business day prior to 4 p.m. and otherwise on the next business day) so long as the notice is addressed as follows:
 - (a) If to the Owner

 - (b) If to the City

City of Port Coquitlam
2580 Shaughnessy Street
Port Coquitlam, BC V3C 2A80
Attention: Corporate Officeror to such other address to which a party hereto from time to time notifies the other parties in writing.
17. By executing and delivering this Agreement each of the parties intends to create both a contract and a deed executed and delivered under seal.

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

PRIORITY AGREEMENT

BETWEEN:

CITY OF PORT COQUITLAM, a municipality incorporated under the *Local Government Act*, RSBC 2015, c. 1 and having its office at 2580 Shaughnessy Street, Port Coquitlam, BC V3C 2A8

(the "**City**")

AND:

(the "**Mortgagee**")

WHEREAS:

- A. _____ (the "Owner") is the owner of that parcel of land and premises located in the City of Port Coquitlam and legally described as PID: _____, Lot ____, _____, Plan _____ (the "**Land**");
- B. The Owner (or predecessor in title) granted the Mortgagee a mortgage which is registered against the title to the Land in the Vancouver/New Westminister Land Title Office under number _____ (the "**Prior Charge**");
- C. On the ____ day of _____, 2017 the Owner granted the City a Section 219 Covenant which is registered against the title to the Land in the Vancouver/New Westminister Land Title Office under number _____, or which will be registered concurrently with this Agreement (the "**Subsequent Charge**");

NOW THEREFORE in consideration of the sum of One (\$1.00) Dollar now paid by the City to the Mortgagee, the receipt and sufficiency of which are hereby acknowledged, the Mortgagee does hereby grant to the City priority over the Prior Charge and the Mortgagee hereby covenants and agrees to subordinate and postpone all its right, title and interest in and to the Land with the intent and with the effect that the interest of the City shall rank ahead of the Prior Charge as though the Subsequent Charge had been executed, delivered and registered in time prior to the registration of the Prior Charge.

As evidence of its agreement to be bound by the terms of this instrument, the Mortgagee hereto has executed the Land Title Office Form C, which is attached hereto and forms part of this Agreement.

END OF PAGE

**SCHEDULE 6 TO PURCHASE AND SALE AGREEMENT
FACILITY USE AGREEMENT**

THIS AGREEMENT dated for reference _____, 2017 affects:

LEGAL DESCRIPTION OF PROPERTY SUBJECT TO THE AGREEMENT:

Parcel Identifier: _____

(“**Residential Lands**”)

AND IS BETWEEN:

QUANTUM PROPERTIES MONTROSE INC., a corporation under the *Business Corporations Act*, SBC 2002, c. 57 and having offices at 100 – 32160 South Fraser way, Abbotsford, BC V2T 1W5

(“**Developer**”)

AND:

CORPORATION OF THE CITY OF PORT COQUITLAM, a municipal corporation under the *Community Charter*, SBC 2003, c. 26 and the *Local Government Act*, RSBC 2015, c. 1 and having offices at 2580 Shaughnessy Street, Port Coquitlam, British Columbia, V3C 2A8

(“**City**”)

GIVEN THAT:

- A. The Developer is or will become the registered owner of the Residential Lands pursuant to a Purchase and Sale Agreement dated for referenced December 22, 2016;
- B. The Developer has or will have applied to the City for rezoning of the Residential Lands to permit the construction of a multiple unit residential development comprising multiple building;
- C. The City has entered into a Design Build Agreement dated for reference December 22, 2016, with a third party to design and build fitness, swimming and other recreation facilities (collectively the “Fitness Facilities”) on lands owned by the City that are adjacent to the Residential Lands;

- D. The Owner and the City wish to enter into this Agreement to permit every resident (a "Resident") of a dwelling unit on the Residential Lands to use the Fitness Facilities without paying a user fee for a period of five years from the later of (a) the date the City issues an occupancy permit for the building in which the dwelling unit is located, and (b) the date the City issues an occupancy permit for the Fitness Facilities;

In consideration of good and valuable consideration (the receipt and sufficiency of which is acknowledged by both parties), and in consideration of the promises exchanged below, the Developer and the City covenant and agree as follows:

1. GRANT OF USER PERMIT

The City hereby grants to every Resident the right and license to use the Fitness Facilities in accordance with annual membership privileges without paying a user fee for a period of five years from the later of (a) the date the City issues an occupancy permit for the building in which the dwelling unit is located, and (b) the date the City issues an occupancy permit for the Fitness Facilities. This right and license is subject to the City's rules, regulations and sanctions that apply to every other user of the Fitness Facilities.

2. NOTICES

Any notice hereunder shall be given either by personal delivery or by mail to the address above listed.

3. NO LEASE

The parties hereto acknowledge and agree that this Agreement is a license and is not a lease. Nothing herein contained shall be deemed or construed by the parties or by any third party as creating the relationship of landlord and tenant between the parties.

4. NO PARTNERSHIP

Nothing herein contained shall be deemed or construed by the parties or by any third party as creating the relationship of principal and agent nor of partnership nor of joint venture between the parties.

5. NON-ASSIGNABILITY

This Agreement and the rights provided herein shall be non-assignable by a Resident to a third party who is not a resident of a dwelling unit on the Residential Lands. .

6. EXECUTION IN COUNTERPARTS AND BY FACSIMILE/EMAIL

This Agreement may be executed and delivered in counterparts and by facsimile transmission or portable document format (PDF) transmission or other electronic means and, if so executed and transmitted, then this Agreement shall be as effective as if the parties had delivered one single executed original Agreement.

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first above written.

**THE CORPORATION OF
THE CITY OF PORT COQUITLAM** by its
authorized signatories:

Mayor:

Corporate Officer:

QUANTUM PROPERTIES MONTROSE INC., by its
authorized signatories:

END OF DOCUMENT

SCHEDULE 7 TO PURCHASE AND SALE AGREEMENT

TERMS OF INSTRUMENT

OPTION TO PURCHASE

THIS OPTION TO PURCHASE dated for reference the day of , 2017

BETWEEN:

QUANTUM PROPERTIES MONTROSE INC., a corporation under the *Business Corporations Act*, SBC 2002, c. 57 and having offices at 100 – 32160 South Fraser way, Abbotsford, BC V2T 1W5

(the “**Grantor**”)

AND:

CORPORATION OF THE CITY OF PORT COQUITLAM, a municipal corporation under the *Community Charter*, SBC 2003, c. 26 and the *Local Government Act*, RSBC 2015, c. 1 and having offices at 2580 Shaughnessy Street, Port Coquitlam, British Columbia, V3C 2A8

(the “**City**”)

WHEREAS:

- A. The Grantor is the registered owner in fee simple of the certain parcels and tracts of land described in Appendix A (the “**Property**”);
- B. The Grantor agreed to purchase the Property from the City pursuant to an Agreement of Purchase and Sale dated for reference December 22, 2016 (the “**Sale Agreement**”) which Sale Agreement included section 1.1(l) and 3.2(e) that the City could repurchase each of Precinct Parcel A, Precinct Parcel B or Precinct Parcel C, each for eighty (80) per cent of the pro rata Purchase Price under the Sale Agreement if the Grantor fails to complete construction of the footings for the buildings described in the Development Concept (defined in the Sale Agreement) by the following dates:

- (i) Precinct Parcel C: the day that is two years following the Closing Date;
- (ii) Precinct Parcel B: the day that is six years following the Closing Date;
- (iii) Precinct Parcel A: the day that is four years following the Closing Date,

(where the Precinct Parcels are defined in the Sale Agreement) and that the City will discharge the Option Agreement from the title to a Precinct Parcel promptly after the completion of the footings for the building to be constructed on the parcel;

- C. The Grantor has agreed to grant to the City this Option to Purchase the Property on the terms and conditions hereinafter set forth to secure the Grantor's compliance with the Sale Agreement;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the promises, covenants and agreements hereinafter set forth, the parties hereto covenant, agree, represent and promise as follows:

1. In consideration of **TEN DOLLARS (\$10.00)** paid by the City to the Grantor, receipt of which is hereby acknowledged, and in further consideration of the City agreeing to sell the Property to the Grantor under the Sale Agreement, the Grantor grants to the City the irrevocable option to purchase the Property, including any improvements thereon (the "**Option**") for eighty (80) per cent of the Purchase Price of the Property under the Sale Agreement, calculated pro rata for each parcel into which the Property is subdivided at the time of the exercise of the option

(the "**Option Price**")

payable in accordance with section 4 of this Option Agreement. None of the monies paid for the granting of the Option shall be credited toward the Option Price.

2. The Option may only be exercised by the City in the event that the Grantor fails to complete construction of the footings for the buildings described in the Development Concept (defined in the Sale Agreement) by any of the following dates:
 - (a) Precinct Parcel C: the day that is two years following the Closing Date;
 - (b) Precinct Parcel B: the day that is six years following the Closing Date;
 - (c) Precinct Parcel A: the day that is four years following the Closing Date,
 where the Precinct Parcels and Closing Date are defined in the Sale Agreement.

3. The Option is exercisable by notice in writing delivered or mailed by registered mail, postage prepaid, to the Grantor in accordance with section 13 of this Option Agreement, prior to midnight December 31, 2023, after which time the Option shall be null and void, and the Grantor shall be entitled to retain the sum paid for the granting of the Option.
4. Upon the exercise of the Option in the matter aforesaid, a binding Contract of Purchase and Sale shall arise between the City and the Grantor with respect to the Property, and the following shall be the terms of the Contract of Purchase and Sale:
 - (a) the completion date shall be sixty (60) days after the exercise of the Option, unless on such day the appropriate Land Title Office is closed, in which case the sale shall be completed on the next following day when such office is open (the “**Option Completion Date**”);
 - (b) the Option Price for the Property shall be paid on the Option Completion Date, subject to the usual real estate adjustments, calculated as of the Option Completion Date;
 - (c) vacant possession shall be given on the Option Completion Date;
 - (d) the following terms, which are free of all encumbrances, shall be included in the Option Price: all fixtures, including trade fixtures, and all improvements installed on or constructed on the Property;
 - (e) the title of the Property shall be transferred free and clear of all encumbrances, except restrictive covenants, existing tenancies, reservations and exceptions in the original grant from the Crown, and easements in favour of utilities and public authorities;
 - (f) the City shall be allowed forty-five (45) days from the date of the exercise of the Option to inspect the Property and examine the title of the Property, and if within the time any valid objection to title is made in writing which the Grantor shall be unable or unwilling to address or remove and which the City will not waive, this Option Agreement shall be null and void notwithstanding any intermediate acts or negotiations in respect of such objection, and the Grantor shall refund to the City the amount paid for the granting of the Option, without interest;
 - (g) a conveyance pursuant to the Land Transfer Form Act, shall be executed by the Grantor and delivered in registrable form three working business days before the Option Completion Date;
 - (h) the City will bear all costs of conveyance and, if applicable, any costs related to arranging a mortgage, and the Grantor will bear all costs of clearing title:

- (i) the Property shall be at the risk of the Grantor until and including the day preceding the Option Completion Date and in the event of loss or damage to the same occurring before such time by reason of tempest, lightning, earthquake, flood of other act of God, fire, explosion, riot, civil commotion, insurrection of war, the City may at its Option cancel this Option Agreement and shall thereupon be entitled to the return of all funds paid to the Grantor. The Property shall be at risk of the City from and including the Option Completion Date;
- (j) if the Grantor has existing financial charges to be cleared from the title, the Grantor, while still required to clear such charges, may wait to pay and discharge same until immediately after receipt of the Option Price, but in this event, the City may pay the Option Price to a lawyer of notary in trust, on undertakings to pay and discharge the financial charges, and return the balance, if any, to the Grantor, In the event that the Grantor refuses to retain a lawyer of notary public to payout such encumbrances, the City's lawyer shall be entitled to pay out such encumbrances from the Option Price;
- (k) there are no representations, warranties, collateral agreements or conditions relating to the Property except as specified herein;
- (l) if there are any improvements constructed on the Property, the City's lawyer shall hold back an amount equal to 10% of the appraised value of the improvements as a holdback under the *Builder's Lien Act* (the '**Holdback**') until 55 days after issuance of an Occupancy Permit for the building and if any builders liens are registered against the Property, the City's lawyer shall be entitled to pay the amount of such lien(s) from the Holdback or apply to pay the Holdback into court to secure a discharge of the lien(s), all without prejudice to any other rights the City may have under the *Builder's Lien Act* or in law or equity; and
- (m) the Grantor covenants and agrees that it will, from and after the date of this Option Agreement to the Option Completion Date:
 - (i) take all reasonable care to protect and safeguard the Property and operate and otherwise deal with the Property as a careful and prudent owner would do;
 - (ii) observe and perform all of its obligations under all encumbrances and diligently enforce all of its rights and remedies under the encumbrances; and
 - (iii) take or cause to be taken all proper steps and actions and corporate proceedings to enable the Grantor to vest a good and marketable title to the Property in the City free and clear of all liens, encumbrances, defects in title, equities or claims of every nature and kind except for permitted encumbrances and to enable the Grantor to carry out the sale of the Property

and to execute and deliver this Option Agreement as valid and binding obligations of the Grantor.

5. Upon the completion of the purchase of the Property resulting from the City exercising the Option, the Grantor shall forfeit to the City the difference between the Option Price and the actual amounts paid by the Grantor for:
 - (a) the Purchase Price paid for the Property under the Sales Agreement; and
 - (b) the costs of any improvements on the Property installed or constructed by the Grantor on the Property,

as unliquidated damages, without prejudice to any other remedies available to the City in law or in equity.
6. The City will upon receipt from the Grantor of a discharge of the Option in registrable form execute and deliver to the Grantor the said discharge from a parcel of land if:
 - (a) the Option is not exercised by the date set out in section 3 of this Option Agreement; or
 - (b) the Grantor has fulfilled the conditions set out in section 2 of this Option Agreement in respect of that parcel.

The preparation of the said discharge and its registration in the Land Title Office will be at the sole cost of the Grantor.
7. The parties acknowledge that the City may, in its uncontrolled discretion, elect not to exercise the Option for any reason.
8. The Option is not assignable by the City.
9. Time shall be of the essence of the Agreement and the Contract of Purchase and Sale constituted by the exercise of the Option.
10. Any tender of documents or money may be made upon the parties hereto at their respective addresses set forth herein or upon their solicitors and any money may be tendered by certified cheque, bank draft, or solicitors trust cheque.
11. There are no representations, warranties, guarantees, covenants or conditions other than those contained herein, all of which shall survive and not merge with and deeds or agreements delivered in connections with the completion of this transaction.

12. Any notice or other writing required or permitted to be given hereunder or for the purposes hereof to any parties shall be sufficiently given if delivered by hand, or if sent by registered mail, or if transmitted by facsimile to such party at such party's address as said above, or at such other address or addresses as the party to whom such notice or other writing is to be given shall have last notified the party giving the same in the manner provided in this section. Any notice delivered by registered mail shall be deemed to have been received three days after posting in any post office in Canada.
13. The Grantor will exercise and do all such act, deeds, things, and assurances as may be requisite in the option of the City, or the City's solicitors, for more perfectly and absolutely transferring, assuring to and vesting in the City title to the Property, in accordance with the terms of this Option Agreement.
14. Each of the parties to this Option Agreement shall bear their own legal fees. The City will be responsible for the costs of preparation of the closing Documents and for the land registration fees in connection with the registration of the Transfer. The Grantor will be responsible for all costs associated with clearing title of financial charges.
15. This Option Agreement and all other documents and instruments entered into connection herewith shall be governed by and interpreted in accordance with the laws of the Province of British Columbia from time to time and the parties irrevocably attorn and submit to the exclusive jurisdiction of the Courts of the Province of British Columbia.
16. This Option Agreement shall enure to the benefit of and be binding on the parties hereto and their respective successors and assigns and successor in title.
17. AND IT IS EXPRESSLY AGREED between the parties hereto that all grants, covenants, provisos and agreements, rights, powers, privileges and liabilities obtained herein shall be read and held as made by and with, granted to and imposed upon, the respective parties hereto, and their respective heirs, executors, administrators, successor and assigns, the same as if the words heirs, executors, administrators, successors and assigns had been inscribed in all proper and necessary places: And wherever the singular or masculine is used herein, the same shall be construed as meaning the plural of feminine or the body politic of corporate where the context or the parties hereto so require, and where a party is more than one person, all covenants shall be deemed to be joint and several.
18. This Option Agreement may be altered or amended only by an agreement in writing signed by the parties. The Option Completion Date may be changed by the parties through their respective solicitors upon instructions to their solicitors as evidenced after in writing by their solicitors. Instructions to the City's solicitors as to changes to the Option Completion Date and other administrative matters may be made on behalf of the City by the Corporate Officer.
19. Each of the parties hereto shall, with reasonable diligence, do all such things and provide all such reasonable assurances as may be required to consummate the transactions

contemplated and each such party shall provide such further documents or instruments required by the other party as may reasonably be necessary or desirable to give effect to the terms and purpose of this Option Agreement and carry out its provisions, before or after the Option Completion Date.

20. Nothing contained or implied in this Option Agreement shall fetter in any way the discretion of the City or the Council of the City. Further, nothing contained or implied in this Option Agreement shall derogate from the obligation of the Purchasers under any other agreement with the City or, if the City so elects, prejudice or affect the City's rights, powers, duties or obligation in the exercise of its functions pursuant to the *Community Charter* or the *Local Government Act*, as amended or replaced from time to time, or act to fetter or otherwise affect the City's discretion, and the rights, powers, duties and obligations of the City under all public and private statutes, by-laws, orders and regulations, which may be, if the City so elects, fully and effectively exercised in relation to the Property.
21. No waiver of any of the provisions of this Option Agreement shall be deemed to or shall constitute a waiver of any other provisions (whether or not similar) nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.
22. Any reference in this Option Agreement to any statute or any section of it shall, unless otherwise expressly stated, be deemed to be a reference to such statute or Article as amended, restated or re-enacted from time to time.
23. The headings appearing in this Option Agreement have been inserted for reference and as a matter of convenience and in no way define, limit or enlarge the scope or meaning of this Option Agreement or any provision of it.
24. In the event that any provision of this Option Agreement or portion of it should be illegal, invalid or unenforceable in respect of any applicable law, the validity, legality and enforceability of the remainder of this Option Agreement shall not be affected or impaired.
25. Wherever the singular or masculine or neuter is used in this Option Agreement, the same shall be construed as meaning the plural, the feminine or body corporate where the context or the parties so requires.
26. This Option Agreement may be executed in counterpart with the same effect as if both Parties had signed the same document. Each counterpart shall be deemed to be an original. All counterparts shall be construed together and shall constitute one and the same Agreement.

IN WITNESS WHEREOF the individual signatories have affixed their hands and seals and the execution by any corporate entity hereto has been attested by its duly authorized officers as of the day and year first above written.

APPENDIX A TO OPTION AGREEMENT

THE LANDS

2428 Mary Hill Road

Parcel Identifier: **000-545-481**

Legal Description:

LOT 5 EXCEPT: PART BYLAW 6287, BLOCK "B" DISTRICT LOT 289 GROUP 1 NEW WESTMINSTER DISTRICT PLAN 1954

Parcel Identifier: **000-545-490**

Legal Description:

LOT 6 EXCEPT: PART BYLAW 6287, BLOCK "B" DISTRICT LOT 289 GROUP 1 NEW WESTMINSTER DISTRICT PLAN 1954

2420 Mary Hill Road

Parcel Identifier: **012-424-846**

Legal Description:

LOT 8 EXCEPT: WEST 10.5 FEET (PLAN WITH BYLAW FILED 6287), BLOCK "B" DISTRICT LOT 289 GROUP 1 NEW WESTMINSTER DISTRICT PLAN 1954

Parcel Identifier: **012-424-838**

Legal Description:

LOT 7 EXCEPT: WEST 10.5 FEET (PLAN WITH BYLAW FILED 6287), BLOCK "B" DISTRICT LOT 289 GROUP 1 NEW WESTMINSTER DISTRICT PLAN 1954

2390 Mary Hill Road

Parcel Identifier: **002-113-023**

Legal Description:

LOT 1 EXCEPT: PART DEDICATED ROAD ON PLAN 80566; BLOCK "C" DISTRICT LOT 289 GROUP 1 NEW WESTMINSTER DISTRICT PLAN 1954

2384 Mary Hill Road

Parcel Identifier: **005-110-581**

Legal Description:

LOT 2 EXCEPT: PARTS ON PLAN WITH BYLAW FILED 6287,
BLOCK "C" DISTRICT LOT 289 GROUP 1 NEW WESTMINSTER DISTRICT
PLAN 1954

2382 Mary Hill Road

Parcel Identifier: **002-932-202**

Legal Description:

LOT 4 EXCEPT: PART ON PLAN 37752; BLOCK "C" DISTRICT LOT 289 GROUP 1 NEW
WESTMINSTER DISTRICT PLAN 1954

Parcel Identifier: **002-932-130**

Legal Description:

LOT 3 EXCEPT: PART ON PLAN WITH BY-LAW FILED 6287; BLOCK "C" DISTRICT LOT 289 GROUP 1
NEW WESTMINSTER DISTRICT PLAN 1954

2380 Mary Hill Road

Parcel Identifier: **012-430-706**

Legal Description:

LOT 1 EXCEPT: THE WESTERLY 10.5 FEET; DISTRICT LOT 289 GROUP 1
NEW WESTMINSTER DISTRICT PLAN 1959

2170 Kelly Ave

Parcel Identifier: **008-501-921**

Legal Description:

LOT 105 DISTRICT LOT 289 GROUP 1 NEW WESTMINSTER DISTRICT PLAN 37752

END OF DOCUMENT

