



TOWN OF STONY PLAIN HAF INITIATIVES

TEMPLATE LAND DONATION AGREEMENT WITH OBLIGATION TO DEVELOP TEMPLATE OPTION TO PURCHASE AFFORDABLE HOUSING PROGRAMS

A. Introduction

It has become a common practice for vendors of land to sell or donate property on the express condition that the purchaser must develop the property for a particular purpose within a certain amount of time following completion of the sale. Vendors also often wish to impose requirements regarding future use of the property (i.e. that the property will continue to be operated as affordable housing). This is particularly popular when bare land is involved and where a donor wishes to make a directed land donation for a particular cause. Unfortunately, it is also common practice for vendors to attempt to secure these promises by means of a mere covenant or promise contained in the sale agreement. The agreements might also provide that if the development is not completed within the time period specified, or if the use changes, the property are to revert back to the vendor. However, each of these methods suffer from serious weaknesses, to the point of being worthless in most situations.

The main risk of relying on future promises within an agreement is that a failure of the purchaser to construct the development as required, or use the property for affordable housing, will merely result in a breach of contract claim. While this will certainly entitle the vendor to initiate an action based on that breach, proving actual damages may be difficult. Further, this is nowhere near the initial goal of ensuring the completion of the development and increasing affordable housing options. Perhaps most importantly, the vendor has no way of re-gaining possession and ownership of the property in order to transfer the property to another party that is able or willing to develop the property for affordable housing.

B. Recommended Approach

While it is impossible to guarantee the construction of a proposed development, save and except for the vendor taking on the construction of the development itself, it is possible to structure the deal so as to provide for:

- (i) a significant amount of encouragement for the purchaser to complete the project; and
- (ii) provide a vendor with a remedy which includes recovery of ownership of the property, in the event the development is not completed or the affordable housing program is not operated as required.

To establish the above incentive, the sale contract or land donation agreement should require the following:

- (i) that the purchaser:
 - a) initiate and complete the construction of the building or project by a set deadline; and

- b) continuously operate the defined affordable housing program on the property throughout the term of the agreement;

failing which the vendor will have the right to re-purchase the property for the same price, for \$1.00, or for such other amount as would act as sufficient encouragement for the purchaser to complete the construction of the development;

- (ii) that prior to the completion of the transfer, the purchaser must execute an "Option to Purchase" Agreement reflecting the terms of the sale contract concerning the vendor's right to re-purchase the property. This step assures that there will be consequences should an owner fail to develop as per the timelines imposed, or should the owner attempt to sell or rent units to individuals who are not qualified within the affordable housing program; and
- (iii) that prior to the completion of the transfer of the property to the purchaser, the Option to Purchase Agreement must be registered on the title to the property by caveat so as to protect the vendor's interest in the property in the event the property is transferred to a third party prior to completion of the construction of the development.

The main advantage of using an Option to Purchase as outlined above is that the vendor will have a secure remedy with which to enforce the purchaser's promise to develop the property by the date specified and, and to ensure the purchaser continues to operate an affordable housing program on the property.

C. Risks to Consider

Although can be prepared so as to better secure certain future obligations, donors and vendors must clearly understand that there are no guarantees that an Option to Purchase will ensure absolute compliance. Risks and issues to consider in relying on an Option to Purchase include:

- (i) **Purchaser Refuses to Transfer Lands Back** - One risk inherent in the use of the Option to Purchase approach is where the purchaser refuses to sign or provide the necessary transfer of land. In such a case, the vendor would have to initiate a legal action in order to force the purchaser to fulfil its obligations under the Option to Purchase. To reduce this risk, the Option to Purchase drafted for this Initiative provides that all of the costs incurred by the vendor to enforce the Option to Purchase can be made the purchaser's responsibility. The goal being to remove the costs of litigation as an impediment to pursuing the enforcement of the vendor's rights.

Another way of reducing this inherent risk is by requiring the purchaser to execute the necessary transfer of land prior to the completion of the sale of the property, which transfer would be held by the vendor pursuant to the terms of the Option to Purchase. This transfer document is commonly referred to as a "Transfer Back". If the requirements of the agreement are not satisfied by the purchaser, the vendor may be free to submit the transfer for registration.

- (ii) **Public Policy Concerns** – although an Option to Purchase can work to provide for a restraint on the owner's right to use and enjoy the property, it is still possible for any party to the Option to Purchase and any current or subsequent owner of the property to raise the issue of public policy. There is some case law available that supports the concept that the Courts must not permit the enforcement of restrictions on use of land that contravene public policy. Restraints on the use of property can, in the right circumstances, be argued to be contrary to

certain public policies. In any event, unless there is a relatively clear indication that the owner is being prevented from selling or leasing its property (as opposed to merely restricted), then the issue should not arise.

- (iii) **Ultimate Jurisdiction of the Courts** – finally, the ultimate determination of the enforceability of any contract lies with the Courts of Alberta. Consequently, in addition to assessing public policy issues, the Court will be final determiner of whether or not an Option to Purchase should be enforced. Most of the requirements are easily satisfied through proper drafting; however, certain facts and circumstances could cause a Court to reach an undesired outcome. For this matter, this risk is likely low, but worth noting for completeness.

D. Draft Templates

Upon review of the enclosed Agreement, you will note that we have prepared the Agreements in a way that will allow for ease of use by landowners, builders and donors. Space is provided within each Template Agreement to complete the necessary information. The information that must be inserted is, generally speaking, very self-explanatory, but where necessary, notes have been provided in the footnotes for ease of completion. Regarding the Town's review of the Template Agreements, we provide the following comments:

Land Donation Agreement

1. **Front Page** – for ease of completion, we have created a template that allows for all of the property details and the important transactional details to be inserted on the page 1. Please note as well that we have included appropriate options for users to select with respect to the Consideration (either nominal consideration for \$1.00, or the issuance of a charitable tax receipt, or both).
2. **Sections 1 to 9** - the usual terms for the completion of a real estate transaction in Alberta are contained within these sections. This includes the closing process, transfer of possession and the Donee's acceptance of the Property "as is where is".
3. **Sections 10 to 14** – outline the Donee's obligation to construct the new affordable housing Development within a set number of months and to operate the Property as affordable housing in accordance with the established guidelines. Section 14 provides the ramifications if the Donee fails to complete the Development as required.
4. **Section 14** – outlines that the Donee may not sell, lease or otherwise transfer the Property without first completing the Development.
5. **Execution** – please note that we have provided execution lines for both corporate purchasers under corporate seal as well as individual purchasers.
6. **Schedule "A"** – Affordable Housing Program Guidelines - for the purposes of completing Schedule "A", we have provided a summary of the common programs and eligibility criteria relied on by established programs in Alberta. Note that many organizations the Social Housing Accommodation Regulation (SHAR) which establishes the rules for accessing Community Housing and Affordable Housing and other Rent-Geared-To-Income programs. This might be an easy resource for the parties to rely on for the purposes of setting affordability parameters.

Generally, it is difficult to provide one set standard or recommendation regarding what will qualify as affordable housing given the myriad of options available. Many organizations, programs and even mortgage lenders consider housing affordable if it costs no more than 30% of household income before taxes. This measure is a useful tool that can be used to define the programs that must be operated on a specific site, but housing affordability is often based on a combination of factors, and every situation is different. Factors that must be considered include:

- The type, age and condition of a home influences costs like heating, electricity, water, sewage, insurance, maintenance and property taxes.
- The location of a home determines transportation expenses like taking public transit or driving a vehicle.
- A person's financial status and stage of life affects what is affordable for them. Everyone's monthly budget is different and personal preferences, priorities, and family needs all need to be considered.

For now, the Schedule provides some initial guidance for the parties to review and select which programs and criteria must be relied on in order to satisfy the Donor that the parcel is being operated as "affordable housing".

Option to Purchase Agreement

This document should be provided as a separate Template for parties to complete. Once completed, it can be included within the Land Donation Agreement as Schedule "B". Instructions have been provided within this Template as follows:

- (i) **Parties** - The name of the Donee must be inserted as the Grantor and the name of the Donor must be inserted as the Grantee;
- (ii) **Land Donation Agreement Date** - The date of the Land Donation Agreement must be inserted within Preamble A;
- (iii) **Enforcement and Costs** - As noted, it is not possible to prevent a Donee from breaching the terms of either the Land Donation Agreement or the Option; therefore, we have included the following to protect the Donor's interests:
 - (a) Section 4 of the Option contemplates having the Donor hold an executed and registrable transfer of land (transfer back), which can be registered immediately upon the right arising under the Option Agreement; and
 - (b) Section 5 provides that all improvements will transfer to the Donor, without compensation;
 - (c) Section 6 requires that the Donee must indemnify the Donor for all costs incurred in creating and enforcing its option; and
 - (d) Section 7 requires that the Purchaser must indemnify the Donor for all costs incurred with respect to addressing non-permitted encumbrances and liens.

- (i) **Execution** – like the Land Donation Agreement, we have provided execution lines for both corporate purchasers under corporate seal as well as individual purchasers; and
- (ii) **Schedule "A"** – should include the same Program Guidelines provided within the Land Donation Agreement. The reason they should be included here is because the Option to Purchase will be registered on title under the caveat. This creates a permanent record of what the parties agreed to at the start of the donation process.

E. Caveat and Registration

It is of paramount importance that the Donor's right to reacquire title to the Property be properly registered. This binds the Property itself, and ensures that even if a purchaser sells or transfers the Property without the Donor's consent, the right to repurchase the Property under the Option can still be enforced against the transferee.

The form of Caveat for the Donor to execute and register against title to the Property can be found within the Land Titles Procedure Manual online. We recommend directing users to this form so that it can be completed and registered together with the transfer of land under the Land Donation Agreement.

**LAND DONATION AGREEMENT WITH OBLIGATION TO DEVELOP
(AFFORDABLE HOUSING)**

DATED: the ____ day of _____, 20____.

BETWEEN:

(the "**Donor**")

-and -

(the "**Donee**")

PROPERTY DETAILS

LEGAL DESCRIPTION OF PROPERTY: PLAN _____
 BLOCK _____
 LOT _____
 EXCEPTING THEREOUT ALL MINES AND MINERALS

MUNICIPAL ADDRESS OF PROPERTY: _____

CONTACT INFORMATION FOR DONEE

ADDRESS: _____

EMAIL ADDRESS: _____

LAWYER (IF APPLICABLE): _____

CONTACT INFORMATION FOR DONOR

ADDRESS: _____

EMAIL ADDRESS: _____

LAWYER (IF APPLICABLE): _____

TERMS AND CONDITIONS OF SALE

CONSIDERATION: *Select those apply:*

- \$1.00 (One Dollar inclusive of GST)
- Charitable Tax Receipt for the Value of the Lands¹: \$_____

CLOSING DATE: _____

¹ See section 3 below.

**LAND DONATION AGREEMENT WITH OBLIGATION TO DEVELOP
(AFFORDABLE HOUSING)**

CLOSING PROCESS AND TRANSFER

1. **Transfer of Property:** The Donor agrees to transfer the Property to the Donee, for the Consideration, subject to the following terms and conditions:
2. **Registrations on Title:** Unless otherwise agreed to in writing, title to the Property will be free and clear of all encumbrances, registrations and obligations except the following:
 - (a) those implied by law;
 - (b) non-financial obligations now on title such as easements, utility rights-of-way, covenants and conditions that are normally found registered against property of this nature; and
 - (c) those registered by the Donee.
3. **[OPTIONAL CLAUSE]² Tax Receipt:** In addition to the nominal payment of \$1.00, the Donee has agreed, as further Consideration, to provide the Donor with a charitable tax receipt for the appraised value of the Property. The Donor acknowledges and agrees that the Donor is responsible for satisfying itself of the appraised value of the Property for the purposes of the Donee's issuance of a charitable tax receipt. Further, the Donee makes no representations or warranties whatsoever respecting the form, content, accuracy or reasonableness of the charitable tax receipt, the acceptability of the charitable tax receipt to the Canada Revenue Agency, or whether or not the charitable Tax Receipt complies with the requirements of the *Income Tax Act* (Canada), as amended.
4. **Possession:** Upon providing the Consideration, the Donee shall be given vacant possession of the Lands on the Closing Date.
5. **Adjustments:** The Donor and Donee agree that the Consideration is inclusive of any adjustments for the current year's taxes and for rents, security deposits, interest and utilities.
6. **Liability:** The Donor will remain liable for the Property until the Donee has been granted possession of the Property pursuant to **Section 4** of this Agreement, at which point the Donee will assume all liability for the Property.
7. **Closing:** Within a reasonable period of time prior to the Closing Date, the Donor shall provide the Donee with a signed Transfer of Land and any other documentation reasonably required to give effect to the terms of this Agreement and which will allow the transaction to close in accordance with the terms of this Agreement including registration of the Donor's caveat re: Option to Purchase as contemplated under **Section 14** of this Agreement.
8. **Registration Costs:** The Donee shall be responsible for the cost of registration of documents under this Agreement at the Alberta Land Titles and all other Land Titles costs.
9. **As Is, Where Is:** The Donee acknowledges that the Donor has not given any representations or warranties regarding the title to or the condition of the Property or any associated improvements on the Property. The Donee acknowledges and agrees that it shall accept the Property and any improvements on an "as is, where is" basis and in all respects, the Donee has relied upon its own due diligence investigations respecting the Property.

² To be used if the Donee is able to issue charitable tax receipts under the *Income Tax Act* (Canada)

**LAND DONATION AGREEMENT WITH OBLIGATION TO DEVELOP
(AFFORDABLE HOUSING)**

CONSTRUCTION OF AFFORDABLE HOUSING DEVELOPMENT & OPTION TO PURCHASE

10. **Development Obligations:** The Donee acknowledges that as part of the consideration of the Donor's agreement to transfer the Property to the Donee, the Donee is required to complete the following affordable housing development on the Property in accordance with the terms of this Agreement:

(insert details of the development)

in accordance with all applicable building permits, development permits, development agreements, bylaws, regulations, building and safety codes, and restrictions affecting the Property (the "Development").

11. **Construction Timelines:** The Donee shall complete construction of the Development to the point of reaching substantial performance, as that term is defined within the *Prompt Payment and Construction Lien Act*, R.S.A. 2000, Chap. P-26.4, as amended, and in accordance with all applicable building permits, development permits, bylaws, regulations, building and safety codes, and restrictions affecting the Property and the Development within _____ months of the execution of this Agreement.
12. **Use of Lands for Affordable Housing:** The Donee further acknowledges that as part of the consideration of the Donor's agreement to transfer the Property to the Donee, the Donee is required, upon completion of the Development, to continuously operate an affordable housing program on the Property in accordance with the program guidelines attached as **Schedule "A"** to this Agreement (the "**Affordable Housing Program**"). The Donee shall use best efforts to fill any vacancies within the Development with eligible purchasers or eligible tenants (as applicable), as those terms are defined under the Affordable Housing Program, as soon as reasonably practicable in the circumstances.
13. **Donor Option to Purchase:** The Donee further acknowledges and agrees that if the Donee fails to satisfy any of the requirements prescribed above, the Donor shall have the option to repurchase the Property for the sum equal to **\$1.00**, subject to adjustments in accordance with the Option Agreement attached to this Agreement as **Schedule "B"**. Concurrently with this Agreement, the Donee shall execute and deliver the Option to Purchase Agreement to the Donor, and the Donor shall be entitled to register the Option to Purchase Agreement against title to the Property by way of caveat.
14. **No Sale or Transfer:** The Donee shall not sell, transfer or lease the Property to any third party without first commencing and completing the construction of the Development in accordance with all applicable building permits, development permits, development agreements, bylaws, regulations, building and safety codes, and restrictions affecting the Property and the Development. The Donee further acknowledges that Donor shall also have the option to repurchase the Property in accordance with the Option to Purchase Agreement attached to this Agreement as **Schedule "B"**, in the event that the Donee sells, transfer or lease, or purports to sell, transfer of lease, the Property prior to commencement and completion of the Development as required within this Agreement.

GENERAL TERMS AND CONDITIONS

15. **Legal Advice:** This Agreement is intended to create binding legal obligations. The Donor and the Donee acknowledge and agree that they have read this Agreement carefully and have been given the opportunity to obtain legal advice before signing.
16. **Survival:** The terms of this Agreement shall survive the execution and delivery of any transfer of land and other documents, the registration of any such documents, the taking possession of the Property by the Donee, and the Closing Date. Any term of this Agreement determined by a court to be unlawful or unenforceable shall be severed from the balance of this Agreement without prejudice to all remaining

**LAND DONATION AGREEMENT WITH OBLIGATION TO DEVELOP
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terms, covenants and conditions.

- 17. **Assignment:** The Donee shall not be entitled to assign this Agreement, either in whole or in part, without the prior written consent of the Donor

- 18. **Notices:** For the purpose of giving and receiving any notice under this Agreement, the communication must be in writing and delivered by personal service, registered mail or email, and sent to one of the addresses provided on page 1 of this Agreement, or such address as either party may designate from time to time by written notice to the other. Any notice shall be either emailed or delivered during normal business hours on a business day and shall have been deemed to be received on the date of delivery.

- 19. **Binding Agreement:** This Agreement shall inure to the benefit of and be binding upon the heirs, executors, administrators and permitted assigns of the individual parties and the successors and permitted assigns of corporate parties.

- 20. **Time:** Time shall in every respect be of the essence.

- 21. **Entire Agreement:** This Agreement shall constitute the entire agreement between the parties and the parties acknowledge that there are no other representations, conditions, or warranties with respect to this Agreement other than those expressly stated within this Agreement.

- 22. **Applicable Law:** This Agreement shall be governed by the laws of the Province of Alberta.

- 23. **Execution:** This Agreement may be executed in counterpart and conveyed to the other party by hand, by fax or other electronic means.

The parties have executed this Agreement to be effective the date first above written, notwithstanding the actual date of execution hereof.

(insert name of corporate Donor)

Per: _____

(c/s)

Per: _____

(insert name of corporate Donee)

Per: _____

(c/s)

Per: _____

[OR]

Witness:

(insert name of individual parties; repeat as needed)

**LAND DONATION AGREEMENT WITH OBLIGATION TO DEVELOP
(AFFORDABLE HOUSING)**

SCHEDULE "A"

Affordable Housing Program Guidelines

[SAMPLE PROGRAM OPTIONS AND GUIDELINES AND OPTIONS]

A. PROGRAMS:

Options Include:

1. Near Market Housing (Rentals)

- Subsidized housing for people with moderate incomes. Rent for near market affordable homes is set at approximately 10-20% below market rent for a similar sized unit in the area.

2. Community (Social) Housing (Rentals)

- Rent is typically set at approximately 20-30% below market rent for a similar sized unit in the area. Rent may also be calculated as 20-30% of tenant's gross monthly household income.
- Generally requires tenant to have a minimum income amount that allows them to only spend 30% of their income on rent.
- An annual income verification is generally required.

3. Down Payment Assistance (Homeownership)

- Program may provide loan for either a partial or full down payment up to a maximum of 5% of the purchase price.
- Down payment mortgage is generally interest free for a set number of years, with repayment not due until the home is sold. If you choose to stay in the home beyond the five-year period you will begin to accrue interest to the second mortgage.
- Mortgage for balance of purchase price is provided by program provider or via traditional financing.

B. ELIGIBILITY CRITERIA

Options Include:

1. Income Level

- Requires that total household income be below certain income threshold limits for unit size (# of bedrooms).
- Consider relying on the Housing Income Limits set annually by the Province of Alberta (see <https://open.alberta.ca/publications/income-thresholds>).
- For homeownership, income levels generally must be above a certain amount.

2. Citizenship and Immigration Status

- Require tenant or homeowner to either:

**LAND DONATION AGREEMENT WITH OBLIGATION TO DEVELOP
(AFFORDABLE HOUSING)**

- a Canadian Citizen;
- a Permanent Resident; or
- a Refugee sponsored by the Canadian Government or have applied for Refugee Status and received confirmation of acceptance of Immigration Status.

3. Asset Limits

- Set asset limits (up to \$25,000 for example)
- May be based the Alberta Social Housing Accommodation Regulation (SHAR) which establishes the rules for accessing Community Housing and Affordable Housing and other Rent-Geared-To-Income programs.
- Assets include, but are not limited to:
 - Bank Accounts;
 - Investments (excluding RRSPs and RESPs);
 - Equity in Property; and
 - Equity in Motor Vehicles – First vehicle is exempt, equity in second and subsequent vehicles (current Canadian Red Book value) is included in asset calculation

4. Number of Minor Children in the Household

- May require that household has at least 1 or more minor children.

5. Employment

- May require that at least one member of household has steady full-time employment.
- May require proof of work history.

6. Debt-Service Ratio

- May require that the household debt-service ratio is below a certain percent (i.e. 40%).

**LAND DONATION AGREEMENT WITH OBLIGATION TO DEVELOP
(AFFORDABLE HOUSING)**

SCHEDULE "B"

Option to Purchase Agreement

[Attach Option to Purchase Agreement]

TEMPLATE OPTION TO PURCHASE AGREEMENT

DATED: the ____ day of _____, 20____.

BETWEEN:

(the "**Grantor**¹")

- and -

(the "**Grantee**²")

WHEREAS:

A. Pursuant to a Land Donation Agreement dated the ____ day of _____, 20____, between the Grantor and the Grantee (the "**Land Donation Agreement**"), the Grantee transferred the following property to the Grantor:

PLAN _____

BLOCK _____

LOT _____

EXCEPTING THEREOUT ALL MINES AND MINERALS

(the "**Property**");

B. The Grantee agreed to transfer the Property to the Grantor on the express obligation and condition that the Grantor commence, diligently and continuously pursue, and complete the construction of the following affordable housing development:

(insert details of the development)

all of which must be completed in accordance with the terms of the Land Donation Agreement (the "**Development**");

C. The Grantor has agreed to grant the Grantee the option to re-purchase the Property upon the terms and conditions contained in this Agreement.

The Grantor and the Grantee therefore agree as follows:

1. The Option: The Grantor hereby grants the Grantee the irrevocable option to purchase the Property at and for the sum of **\$1.00** (the "**Option**"), subject only to the following permitted encumbrances:

(a) those implied by law;

(b) non-financial obligations now on title such as easements, utility rights-of-way, covenants and conditions that are normally found registered against property of this nature; and

(c) The Grantee's Caveat Re: Option to Purchase

2. Option Triggers: This Option may only be exercised by the Grantee:

¹ *The Donee*

² *The Donor*

TEMPLATE OPTION TO PURCHASE AGREEMENT

- (a) if the Grantor fails to complete the construction of the Development on or before 12:00 noon within _____ months of the date of the Land Donation Agreement;
- (b) if the Grantor sells, leases or otherwise transfers, or purports to sell, lease or transfer, the Property or any portion thereof prior to the completion of the Development in accordance with the terms of the Land Donation Agreement; or
- (c) if the Grantor fails to continuously operate the Development as an affordable housing program on the Property in accordance with the program guidelines attached as **Schedule "A"** to this Agreement (the "**Affordable Housing Program**").

In each such case the Grantee shall be entitled to repurchase the Property pursuant to the exercise of the Option granted within this Agreement.

3. Notice to Exercise Option: The Grantee may exercise the Option by giving notice in writing to the Grantor (or to the then current owner of the Property) which shall be sent to the address for service of the registered owner of the Property as listed on the title to the Property, and shall be deemed to have been received by the recipient on the third day following the sending of the said notice by registered mail.

4. Completion of Re-Purchase: The transaction shall be completed on the 60th day following the date upon which the Option is exercised as aforesaid (the "**Completion Date**"). All normal adjustments shall be made as of the Completion Date. The Grantor shall provide the Grantee with a registrable transfer of land with respect to the Property not less than ten (10) days prior to the Completion Date upon reasonable trust conditions. As part of closing under the Land Donation Agreement or at any time during the term of this Agreement, the Grantor may be required to provide the Grantee with a registrable transfer back of land to be held in trust by the Grantee pursuant to the terms of this Agreement and utilized for the purposes of completing the purchase of the Property in the event that the Grantee exercises its Option under this Agreement.

5. No Compensation for Improvements: In the event that the Grantee exercises the Option, ownership of any buildings, fixtures or other improvements shall, at the Grantee's option, transfer to the Grantee. The Grantor shall not be entitled to any compensation or damages in respect to buildings, fixtures or other improvements which may be constructed or situated on the Property.

6. Grantor Costs: The Grantor shall pay on demand and shall indemnify the Grantee for:

- (a) all costs in relation to any and all expenses incurred by the Grantee in the negotiation, preparation, execution and performance of this Agreement and the Land Donation Agreement;
- (b) the amount any principal and interest outstanding under all financial encumbrances which may be accepted by the Grantee upon transfer of the title;
- (c) any and all costs incurred by the Grantee in restoring the Property to the condition that existed as of the date of the Land Donation Agreement (including, without restriction, all legal costs on a solicitor and his own client full indemnity basis, and all costs incurred in discharging non-permitted encumbrances); and
- (d) all costs in relation to removing any or all buildings, fixtures or other improvements constructed or partially constructed on the Property by the Grantor, if required by the Grantee.

7. Term: This Agreement shall remain in force for the reasonable lifetime of the Development and in any event, for a minimum of 40 years from the date of this Agreement, unless terminated by the Grantee in writing.

8. Caveat: The Grantee shall be entitled to register a caveat against the title to the Property pursuant to this Agreement. In this regard, the Grantor covenants not to take any steps whatsoever to discharge this registration including, without restriction, the service of any notice to take proceedings on such caveat.

TEMPLATE OPTION TO PURCHASE AGREEMENT

9. Construction Liens: Upon the exercise of this Agreement, the Grantor shall immediately cause to be discharged all construction liens or other non-permitted encumbrances which may have been registered on the title to the Property. The Grantor shall upon demand indemnify and save harmless the Grantee from and against any and all claims, damages, demands, costs (including all legal costs on a solicitor and his own client full indemnity basis), and expenses of any kind whatsoever made or incurred against the Grantee as a result of any construction liens or other non-permitted encumbrances which may be registered on the title to the Property, or as a result of the Grantor's failure to perform any of its obligations under this Agreement. Any and all such claims and costs shall, at the sole option of the Grantee, be adjusted as a credit to the Grantor upon closing.

10. Legal Advice: This Agreement is intended to create binding legal obligations. The Grantor and the Grant acknowledge and agree that they have read this Agreement carefully and have been given the opportunity to obtain legal advice before signing.

11. No Assignment: This Agreement may not be assigned by the Grantor, either in whole or in part, without the prior written consent of the Grantee.

12. Binding Agreement: This Agreement shall enure to the benefit of and be binding against the parties hereto and their respective successors and permitted assigns. Specifically, and without limiting the generality of the foregoing, this option shall bind the Grantor and all future owners of the Property.

13. Time: Time shall in every respect be of the essence.

14. Entire Agreement: This Agreement shall constitute the entire agreement between the parties and the parties acknowledge that there are no other representations, conditions, or warranties with respect to this Agreement other than those expressly stated within this Agreement.

15. Applicable Law: This Agreement shall be governed by the laws of the Province of Alberta.

16. Execution: This Agreement may be executed in counterpart and conveyed to the other party by fax or other electronic means

The Grantor and the Grantee have executed this Agreement this _____ day of _____, 20____

(insert name of corporate Donor)

Per: _____

(c/s)

Per: _____

(insert name of corporate Donee)

Per: _____

(c/s)

Per: _____

[OR]

Witness:

(insert name of individual parties; repeat as needed)

SCHEDULE "A"

Affordable Housing Program Guidelines

[Attach Established Program Guidelines]