

**PART 2 – TERMS OF INSTRUMENT**

**HOUSING AGREEMENT AND COVENANT**

(Section 483 *Local Government Act* and Section 219 *Land Title Act*)

THIS AGREEMENT dated for reference the 18<sup>th</sup> day of October 2022, is

BETWEEN:

**COWICHAN PROJECT 168 LTD., INC.NO. BC1273676**  
205-43995 PROGRESS WAY  
CHILLIWACK, B.C. V2R 0E6

(the "Owner")

AND:

**THE CORPORATION OF THE DISTRICT OF NORTH COWICHAN**  
7030 Trans Canada Highway  
Duncan, B.C. V9L 6A1

(the "District")

**WHEREAS:**

- A. The Owner is the registered owner in fee simple of the lands and premises in the District of North Cowichan, British Columbia which are legally described in Item 2 of the Form C attached hereto (the "Lands");
- B. Section 483 of the *Local Government Act* permits the District to enter into and note on title to lands housing agreements which may include, without limitation, conditions in respect to the form of tenure of housing units, availability of housing units to classes of persons, administration of housing units, and rent that may be charged for housing units;
- C. Section 219 of the *Land Title Act* permits the registration of a covenant of a positive or a negative nature in favour of the District in respect of the use of, construction on, and subdivision of land; and
- D. The District and the Owner wish to enter into this Agreement to provide long-term affordable rental housing on the terms and conditions set out in this Agreement.

In consideration of one dollar (\$1.00) and other 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 District covenant and agree pursuant to section 483 of the *Local Government Act* and section 219 of the *Land Title Act* as follows:

**ARTICLE 1 DEFINITIONS AND INTERPRETATION**

**1.1 Definitions** – In this Agreement, the following words have the following meanings:

- (a) “Affordable Housing Unit” means a Secure Rental Unit for which the maximum rent charged is calculated accordance with section 3.4(b);
- (b) “Agreement” means this agreement together with all LTO forms, schedules, appendices, attachments and priority agreements attached hereto;
- (c) “BC Housing” means the British Columbia Housing Management Commission, or its successor in role;
- (d) “Below Market Value Unit” means a Secure Rental Unit for which the maximum rent charged is calculated in accordance with section 3.4(a);
- (e) “Building” means the residential building(s) proposed to be constructed on the Lands by the Owner after the reference date of this Agreement, which includes the Secure Rental Units;
- (f) “CMHC” means the Canadian Mortgage and Housing Commission, or its successor in role;
- (g) “Dwelling Unit” means a residential dwelling unit located or to be located on the Lands;
- (h) “Eligible Tenant” means a Tenant who, at the time they enter into a Tenancy Agreement:
  - (i) for an Affordable Housing Unit, has a gross household income equal to or less than the Housing Income Limits; and
  - (ii) for a Below Market Value Unit, has a gross household income equal to or less than an amount for which 30% of that amount is equal to the total annual rent paid for a Below Market Value Unit;
- (i) “Housing Income Limits” means the Housing Income Limits for affordable housing programs (for each category of dwelling unit) established by BC Housing from time to time in the “Duncan-N.Cowichan Area” as shown in the annual Housing Income Limits report published by BC Housing;
- (j) “LTO” means the Victoria Land Title Office or its successor;
- (k) “Market Value” means the monthly rent rate for comparable rental units within the Duncan-North Cowichan area, as determined by a professional real estate appraiser, obtained by the Owner, and confirmed by the District;
- (l) “Secure Rental Unit” means a Dwelling Unit in respect of which the occupancy is governed by a Tenancy Agreement;
- (m) “Subdivide” means to divide, apportion, consolidate or subdivide the Lands or any building

on the Lands, or the ownership or right to possession or occupation of the Lands or any building on the Lands, 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 interests” or a “shared interest in land” as defined in the *Real Estate Development Marketing Act* (British Columbia);

- (n) “Tenancy Agreement” means a tenancy agreement, lease, license or other agreement granting rights to occupy a Secure Rental Unit; and
- (o) “Tenant” means an occupant of a Secure Rental Unit by way of a Tenancy Agreement.

**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* (British Columbia) 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 a Tenant, agent, officer and invitee of the party;
- (j) reference to a “day”, “month”, or “year” is a reference to a calendar day, calendar month, 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”.

## **ARTICLE 2 USE AND CONSTRUCTION OF LANDS AND HOUSING INCOME LIMIT UNITS**

**2.1 Use and Construction of Lands** – The Lands must only be used in accordance with this Agreement and:

- (a) the Lands will not be developed and no building or structure will be constructed or used on the Lands unless as part of the development, construction, or use of any such building or structure on the Lands the Owner also designs and constructs to completion within Areas 1, 2, 3 and 5 as shown in Appendix B, in accordance with a building permit issued by the District of North Cowichan, any development permit issued by the District of North Cowichan and, if applicable, any rezoning consideration applicable to the development on the Lands, at least thirty-seven (37) Secure Rental Units of which at least nineteen (19) are constructed in the first three of these Areas to be constructed to completion;
- (b) at least 10% of all Dwelling Units constructed on the Lands after the reference date of this Agreement are designated as Secure Rental Units; and
- (c) of the Secure Rental Units on the Lands, no greater than 75% will be designated as Below Market Value Units, and no fewer than 25% will be designated as Affordable Rental Units.

**2.2 Designation of Secure Rental Units** – Prior to the creation of individual titles to Dwelling Units through Subdivision, the Owner must indicate to the District by way of notice which Dwelling Units are to be designated as Secure Rental Units in accordance with section 2.1, after which the designation of the Secure Rental Units will not be changed without express permission from the District. Upon depositing of a subdivision plan creating the Secure Rental Units, the District will cause an appendix (“Appendix C”) to be added to this Agreement, as registered on title to the Lands, listing the legal descriptions of each Secure Rental Unit and its corresponding designation pursuant to section 2.1.

**2.3 Short-term Rentals Prohibited** – No Secure Rental Unit may be rented to or tenanted by any person for a term of less than thirty (30) days.

**2.4 Requirement for Statutory Declaration** – Within thirty (30) days after receiving notice from the District, the Owner must, in respect of each Secure Rental Unit, provide to the District a statutory declaration, substantially in the form (with, in the District’s discretion, such further amendments or additions as deemed necessary or desirable) attached as Appendix A, sworn by the Owner or an authorized signatory of the Owner, containing all of the information required to complete the statutory declaration. The District may request such statutory declaration in respect to each Secure Rental Unit no more than once in any calendar year; provided, however, notwithstanding that the Owner may have already provided such statutory declaration in the particular calendar year, the District may request and the Owner must provide to the District such further statutory declarations as requested by the District in respect to a Housing Income Limit Units if, in the District’s absolute



determination, the District believes that the Owner is in breach of any of its obligations under this Agreement.

**2.5 District Authorized to Make Inquiries** – The Owner hereby irrevocably authorizes the District to make such inquiries as it considers necessary in order to confirm that the Owner is complying with this Agreement.

**2.6 Expiry of Housing Agreement** – This Agreement will cease to apply from and after the tenth (10<sup>th</sup>) anniversary of the date the occupancy permit is issued for the Secure Rental Unit for which this Agreement applies. Upon expiry, the Owner may provide to the District a discharge of this Agreement, which the District will execute and return to the Owner for filing in the LTO.

**2.7 Discharge of Agreement** – Subsequent to identification to the District of Secure Rental Units, as set out in section 2.2, the Owner may provide to the District a discharge of this Agreement and the notice of housing agreement as set out in section 4.1 from title to any Dwelling Unit that is not a Secure Rental Unit within the same Building as a Secure Rental Unit, which the District will execute and return to the Owner for filing in the LTO.

### **ARTICLE 3 USE OF HOUSING INCOME LIMIT UNITS**

**3.1 Use of Secure Rental Units** – Each Secure Rental Unit may only be occupied by an Eligible Tenant, unless in accordance with section 3.2(c).

**3.2 Tenant Screening and Records** – The Owner covenants and agrees with the District as follows:

- (a) the Owner will review income of each prospective Tenant at the commencement of each Tenancy to determine whether the prospective Tenant is an Eligible Tenant; or
- (b) the Owner will select prospective Tenants from a waitlist maintained by the Cowichan Housing Association, and prior to selecting prospective Tenants from the waitlist, will receive confirmation in writing from the Cowichan Housing Association or other organization providing housing assistance as approved by the District, that each prospective Tenant is an Eligible Tenant; or
- (c) At the sole discretion of the Director of Planning, if after making best efforts the Owner is unable to locate an Eligible Tenant to enter into a Tenancy Agreement, the Owner may enter into a Tenancy Agreement with a person other than an Eligible Tenant; and
- (d) the Owner will maintain a system of records indicating the incomes of and rent paid by each past and current Tenant selected through clause 3.2(a) or the written confirmation from the Cowichan Housing Association or other organization proving housing assistance approved by the District for each Tenant selected through clause 3.2(b), and must maintain such records for a period of seven years.

**3.3 Occupancy and Tenure of Secure Rental Units** – The Owner must not rent, lease, license or otherwise permit occupancy of any Secure Rental Unit except in accordance with the following additional conditions:

- (a) the Secure Rental Units will be used or occupied only pursuant to a Tenancy Agreement;
- (b) the Owner will not require the Tenant or any permitted occupant to pay any extra charges or fees for sanitary sewer, storm sewer, water or property or similar tax;
- (c) the Owner will not require the Tenant to pay any additional fee for, nor prevent or prohibit Tenants from accessing any common areas or amenities within the Building or on the Lands, and for the purpose of this provision the term “Building” means the entire building that contains the Secure Rental Units, regardless of any subdivision of that building, and “Lands” means entire area of the Lands as of the reference date of this Agreement, regardless of any subsequent subdivision of that parcel;
- (d) the Owner will attach a copy of this Agreement, or at a minimum Articles 2 and 3 of this Agreement, to every Tenancy Agreement; and
- (e) the Owner will forthwith deliver a certified true copy of any Tenancy Agreement to the District upon demand.

**3.4 Rental Rates of Below Market Value & Affordable Housing Units** – The Owner must not charge monthly rental rates that exceed the amount calculated using the following formulas:

- (a) For Below Market Value Units:

*10% below Market Value*

- (b) For Affordable Housing Units:

*30% applicable Housing Income Limits annual income level / 12*

for certainty, the Owner may increase rental rates from time to time subject to the *Residential Tenancy Act*.

#### **ARTICLE 4 MISCELLANEOUS**

**4.1 Housing Agreement** – The Owner acknowledges and agrees that:

- (a) this Agreement includes a housing agreement entered into under section 483 of the *Local Government Act* and a covenant under section 219 of the *Land Title Act*;
- (b) the District may file notice of, and register, this Agreement in the LTO pursuant to section 483(5) of the *Local Government Act* against the title to the Lands.

**4.2 Modification** – This Agreement may be modified or amended from time to time, by consent of the Owner and a bylaw duly passed by the Council of the District and thereafter if it is signed by the District and the Owner.

**4.3 Management** – The Owner covenants and agrees with the District that:

- (a) the Owner must furnish good and efficient management of the Secure Rental Units;
- (b) the Owner must permit representatives of the District to inspect the Secure Rental Units at any reasonable time, subject to the notice provisions of the *Residential Tenancy Act*;
- (c) the Owner must maintain the Secure Rental Units in a good state of repair and fit for habitation in accordance with the requirements of the *Residential Tenancy Act*, reasonable wear and tear excepted; and
- (d) the Owner must comply with all applicable enactments and any health and safety standards applicable to the Lands.

**4.4 Indemnity** – The Owner, on its behalf, will indemnify, defend and save harmless the District 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 negligent 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 construction, maintenance, repair, ownership, lease, license, operation, management or financing of the Lands or any Secure Rental Unit or the enforcement of any Tenancy Agreement; or
- (c) without limitation, any legal or equitable wrong on the part of the Owner or any breach of this Agreement by the Owner.

**4.5 Release** – The Owner, on its behalf, hereby releases and forever discharges the District 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) construction, maintenance, repair, ownership, lease, license, operation or management of the Lands or any Secure Rental Units under this Agreement; or
- (b) except to the extent arising from the negligence or wilful misconduct of the District or those for whom it is at law responsible, the exercise by the District of any of its rights under this Agreement.

**4.6 Survival** – The indemnity and release set out in this Agreement will survive termination or discharge of this Agreement.

**4.7 District's Powers Unaffected** – This Agreement does not:

- (a) affect, fetter or limit the discretion, rights, duties or powers of the District under any enactment or at common law, including in relation to the use or subdivision of the Lands;
- (b) impose on the District 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.

**4.8 Agreement for Benefit of District Only** – The Owner and the District agree that:

- (a) this Agreement is entered into only for the benefit of the District;
- (b) this Agreement is not intended to protect the interests of the Owner, any Tenant, or any future Owner, lessee, occupier or user of the Lands or the building or any portion thereof, including any Secure Rental Units; and
- (c) the District 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.

**4.9 No Public Law Duty** – Where the District 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 District is under no public law duty of fairness or natural justice in that regard and agrees that the District may do any of those things in the same manner as if it were a private party and not a public body.

**4.10 Notice** – Any notice, demand, or required to be served or given to a party herein pursuant to this Agreement will be in writing and will be sufficiently served or given personally served upon the party for which it is intended, or if delivered,

- (a) to the postal address of the Owner set out in the records at the LTO, and
- (b) to the postal address of the District set out on the first page of the terms of this Agreement and to the attention of the Director of Planning:

or to the most recent postal address provided in a written notice given by each of the parties to the other. The date of receipt of any such notice, demand, or request will be deemed to be the date of delivery if such notice, demand, or request is served personally or if mailed on the fifth business day next following the date of such mailing; provided, however, that if mailed, should there be between



the time of mailing and the actual receipt of the notice a mail strike, slow down of postal service or other labour dispute which affects the delivery of such notice, then such notice will be deemed to be received when actually delivered.

**4.11 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.

**4.12 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.

**4.13 Waiver** – All remedies of the District will be cumulative and may be exercised by the District 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 District exercising any or all remedies will not prevent the later exercise of any remedy for the same breach or any similar or different breach.

**4.14 Entire Agreement** – This Agreement, and any documents signed by the Owner contemplated by this Agreement, represent the entire agreement between the District and the Owner respecting the use and occupation of the Secure Rental Units, and there are no warranties, representations, conditions or collateral agreements made by the District except as set forth in or contemplated by this Agreement.

**4.15 Further Assurance** – Upon request by the District, the Owner will forthwith do such acts and execute such documents as may be reasonably necessary in the opinion of the District to give effect to this Agreement.

**4.16 Agreement Runs with 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.

**4.17 Equitable Remedies** – The Owner acknowledges and agrees that damages would be an inadequate remedy for the District for any 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.

**4.18 No Joint Venture** – Nothing in this Agreement will constitute the Owner as the agent, joint venturer, or partner of the District or give the Owner any authority to bind the District in any way.

**4.19 Applicable Law** – The laws of British Columbia (including, without limitation, the *Residential Tenancy Act*) will apply to this Agreement and all statutes referred to herein are enactments of the Province of British Columbia.

**4.20 Execution in Counterparts & Electronic Delivery** - This Agreement may be executed in any number of counterparts and delivered by e-mail, each of which shall be deemed to be an original

and all of which taken together shall be deemed to constitute one and the same instrument, provided that any party delivering this Agreement by e-mail shall also deliver to the other party an originally executed copy of this Agreement.

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement on the *Land Title Act Form C* which is attached to and forms part of this Agreement.




- 4. I confirm that the Owner has complied with the Owner's obligations under the Housing Agreement.



5. I make this solemn declaration, conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and pursuant to the *Canada Evidence Act*.

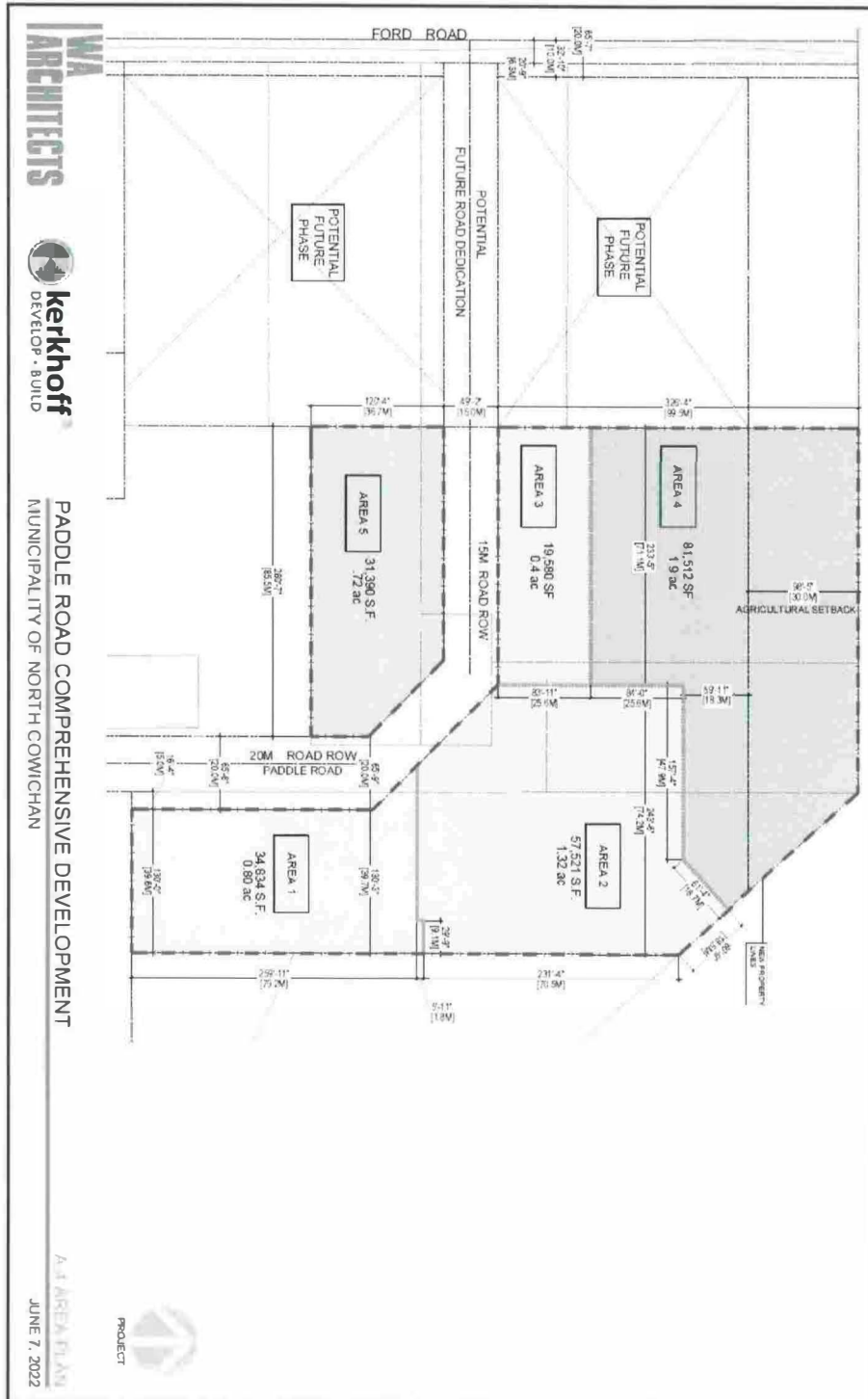
DECLARED BEFORE ME at the City of \_\_\_\_\_ )  
\_\_\_\_\_, in the Province of British )  
Columbia, this \_\_\_\_\_ day of )  
\_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
A Commissioner for Taking Affidavits in the )  
Province of British Columbia )

\_\_\_\_\_  
DECLARANT

### Appendix B to Housing Agreement

### Site Plan



**CONSENT AND PRIORITY AGREEMENT**

**PRIORITY AGREEMENT**

**WHEREAS:**

A. Frist West Credit Union (the "Chargeholder") is the holder of a mortgage and assignment of rents (the "Financial Charges") encumbering the lands described in Item 2 of Part 1 of the Form C General Instrument to which this Priority Agreement is attached and which are registered in the Victoria Land Title Office as Mortgage CA8603023 and Assignment of Rents CA8603024; and

B. A covenant is being granted pursuant to Part 2 of the Form C General Instrument to which this Priority Agreement is attached (the "District's Charge") which is or will be registered against title to the lands.

NOW THEREFORE for one dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed to by the Chargeholder, the Chargeholder hereby grants to the Corporation of the District of North Cowichan priority for the District's Charges over all the Chargeholder's right, title and interest in and to the lands as if the District's Charges had been executed, delivered and registered prior to the execution and registration of the Financial Charges and prior to the advance of any monies pursuant to the Financial Charges. The grant of priority is irrevocable, unqualified and without reservation or limitation.

IN WITNESS WHEREOF, the Chargeholder has executed and delivered this Consent and Priority Agreement by executing the Land Title Act Form C above which is attached hereto and forms part of this Agreement.