

**OPTION TO PURCHASE AND  
PURCHASE AND SALE AGREEMENT**

THIS AGREEMENT dated for reference June 30, 2008 is

BETWEEN:

DISTRICT OF SUMMERLAND, Box 159, Summerland, B.C.  
V0H 1Z0

(the "Vendor")

AND:

3093467 NOVA SCOTIA ULC (Reg. No. A0065079), 800 –  
1708 Dolphin Avenue, Kelowna, B.C. V1Y 9S4

(the "Purchaser")

In consideration of the promises exchanged below (and other good and valuable consideration the receipt and sufficiency of which the Vendor acknowledges), the Vendor and the Purchaser agree with each other as follows:

**ARTICLE 1 - DEFINITIONS**

1.1 **Definitions** – In this agreement, in addition to the words defined in the recitals to it:

- (a) "Business Day" means a day other than a Saturday, Sunday or B.C. statutory holiday.
- (b) "Completion" means completion of the sale of the Land to the Purchaser in accordance with section 3.7.
- (c) "Completion Date" means the date for completion of the purchase and sale of the Land contemplated hereunder, determined in accordance with section 2.3.
- (d) "Contaminants" means
  - (i) as defined in the *Environmental Management Act*, any biomedical waste, contamination, contaminant, effluent, pollution, recyclable material, refuse, hazardous waste or waste;
  - (ii) matter of any kind which is or may be harmful to human safety or health or to the environment; or

- (iii) matter of any kind the storage, manufacture, disposal, emission, discharge, treatment, generation, use, transport, release, remediation, mitigation or removal of which is now or is at any time required, prohibited, controlled, regulated or licensed under any Environmental Laws;
- (e) "Development Agreement" means an agreement between the Purchaser and the Vendor regarding the provision of services and amenities by the Purchaser with respect to the Purchaser's Development, to be approved by the parties under section 2.5(d).
- (f) "Development Agreement Covenant" means any covenant or covenants under section 219 of the *Land Title Act* that may be required by the Vendor to be registered against all or part of the Land and other land included in the Purchaser's Development restricting the subdivision, development or use of such land until the services and amenities to be provided under the Development Agreement have been provided, to be approved by the parties under section 2.5(d).
- (g) "Development Agreement Security" means any letter of credit or other financial security that may be required by the Vendor to be provided by the Purchaser under the Development Agreement in order to secure the services and amenities to be provided under the Development Agreement.
- (h) "Environmental Law" means any past, present or future, common law or principle, enactment, statute, regulation, order, bylaw or permit, and any requirement, standard or guideline of any federal, provincial or local government authority or agency having jurisdiction, relating to the environment, environmental protection, pollution or public or occupational safety or health.
- (h.1) "Extension Price Increase" means a portion of the Purchase Price equal to \$1,463,893.00 payable as a result of an extension under a previous version of this Agreement.
- (i) "Golf Course Covenant" means a covenant under section 219 of the *Land Title Act* to be granted by the Purchaser to the Vendor on Completion, to be approved by the parties under section 2.5(d), regarding the development of the golf course in accordance with the Purchaser's Development.
- (j) "Land" means Lot A and the land in the District of Summerland, and improvements thereon and thereto, legally described as follows:

PID: 012-072-842

Lot 1 District Lot 2543 Osoyoos Division Yale District Plan 787

PID: 012-072-851  
 Lot 2 District Lot 2543 Osoyoos Division Yale District Plan 787

PID: 012-072-869  
 Lot 3 District Lot 2543 Osoyoos Division Yale District Plan 787

PID: 025-211-137  
 Lot A District Lot 2542 Osoyoos Division Yale District Plan KAP70418.

- (k) "Lot A" means a portion of the land to be subdivided from the following land in the District of Summerland legally described as follows:

PID: 011-340-002  
 District Lot 2542 Osoyoos Division Yale District Except Parcel A (Plan 629) and KAP70418

PID: 006-839-541  
 Lot A District Lot 3756 Osoyoos Division Yale District Plan 22447

together with all improvements on and to that portion, which portion is shown generally on the sketch plan attached as Schedule C and which will exclude the portion of the described lands comprising the new intended location of the Princeton-Summerland Highway and the area to the southeast of the relocated road, based on the landfill mitigation plan approved under a previous version of this Agreement.

- (l) "LTO" means the appropriate Land Title Office.
- (m) "Option" means the option granted under section 2.1.
- (n) "Option Extension Fee" means the price (excluding GST) paid by the Purchaser to the Vendor to extend the Option under a previous version of this Agreement in an amount equal to \$50,000.00.
- (o) "Option Price" means the price (excluding GST) paid by the Purchaser as consideration for the Option in the amount of \$160,000.00.
- (p) "Permitted Encumbrances" means the reservations and exceptions contained in the original grant from Crown, any liens, charges and encumbrances described in Schedule A, any charges and encumbrances to be registered pursuant to this agreement and any charges and encumbrances required by the approving officer for the Vendor in connection with the subdivision to create Lot A.
- (p.1) "Phase II of the Purchaser's Development" means the second phase of the Purchaser's Development which is deemed to commence with the creation of the

126<sup>th</sup> fee simple parcel (including for clarity, any strata lots of any kind) being subdivided therefrom.

- (q) "Purchase Price" means the purchase price (excluding GST) for the Land in an amount of \$5,789,819.00, subject to any increase under section 3.3.
- (r) "Purchaser's Development" means the Purchaser's proposed development of the Land and certain other land as described in Summerland Hills Neighbourhood Plan, dated April 2006.
- (s) "Purchaser's Solicitors" means Farris, Vaughan, Wills & Murphy LLP.
- (t) "Re-Purchase Option" means an option to purchase some or all of the Land, to be granted by the Purchaser to the Vendor on Completion, to be approved by the parties under section 2.5(d), exercisable in the event that the Purchaser's Development does not proceed in a timely manner.
- (u) "School Site Covenant" means a covenant under section 219 of the *Land Title Act* to be granted by the Purchaser to the Vendor on Completion, prohibiting the development of a portion of the land to be included in the Purchaser's Development until the school site area contemplated generally in the Summerland Hills Neighbourhood plan is transferred to the Vendor, to be approved by the parties under section 2.5(d).
- (v) "Subdivision Plan" means the plan of subdivision to create Lot A and consolidate the Land into a single parcel, based on the sketch plan attached as Schedule C, the final form of which will reflect the landfill mitigation plan approved under a previous version of this Agreement.
- (w) "Transfer" means a transfer or transfers in registrable form transferring the estate in fee simple of the Land to the Purchaser.
- (x) "Utility SRWs and Plans" means statutory right of way agreements to be granted in favour of the Vendor for utility purposes over the areas of the Land shown generally in Schedule D and the statutory right of way plans of these utility corridors to be prepared by the Vendor based on the areas shown in Schedule D, which agreements and plans are to be approved by the parties under section 2.5(d).
- (y) "Vendor's Solicitors" means Lidstone, Young, Anderson.

## ARTICLE 2 - OPTION TO PURCHASE

- 2.1 **Grant of Option** – In consideration of the payment of the Option Price by the Purchaser to the Vendor, the Vendor hereby grants to the Purchaser the sole and exclusive option, irrevocable within the time herein limited, for exercise by the Purchaser to purchase the Land free and clear of all liens, charges and encumbrances except for the Permitted Encumbrances, (the “Option”).
- 2.2 **Exercise of Option** – The Purchaser may exercise the Option at any time until 5:00 p.m. on December 31, 2009 (the “Expiry Date”).
- 2.3 **Binding Agreement** - If the Purchaser exercises the Option in accordance with this Article, this agreement will become a binding contract for the purchase and sale of the Land, to be completed upon the terms and conditions contained in this agreement on the day that is 28 days after the date the Option is exercised provided that if that day is not a Business Day then the purchase and sale transaction will be completed on the next following Business Day.
- 2.4 **Non-Exercise of Option** – If the Option is not exercised within the time and in the manner set forth in this Article (including due to any of the conditions under section 2.5 not being satisfied within the time provided therein), this agreement will become null and void and no longer binding on the parties. In such circumstances, the Purchaser will not be entitled to the return of the Option Price or the Option Extension Fee and the Purchaser will prepare, execute and deliver to the Vendor a registrable discharge of this agreement that will upon registration in the LTO discharge this agreement from title to the Land in the LTO.
- 2.5 **Preconditions to Option Exercise** – Notwithstanding the rest of this Article, the Purchaser cannot exercise the Option until and unless the following conditions have been met on or before December 29, 2009:
- (a) the Subdivision Plan will have received all necessary approvals required by law in order for it to be registrable in the LTO.
  - (b) each party will have, each at their sole discretion, confirmed in writing its satisfaction with any conditions of subdivision approval imposed by the approving officer or any other governmental authority whose approval of the Subdivision Plan is required.
  - (c) the Vendor will have adopted a zoning amendment bylaw to permit the development of the Purchaser’s Development on the Land.
  - (d) the Vendor and the Purchaser will have, each at their sole discretion, approved of the final form and content of the Development Agreement, the Development Agreement Covenant, the Development Agreement Security, the Golf Course Covenant, the School Site Covenant, the Re-Purchase Option and the Utility SRWs and Plans.

The above conditions are for the benefit of both parties and cannot be waived. If any of the above conditions is not satisfied within the time provided, this agreement will automatically terminate and the parties will have no further obligations hereunder, notwithstanding any rule of law or of equity to the contrary. For clarity, neither party has any obligation whatsoever to fulfill any requirements under the *Environmental Management Act* necessary in order to satisfy condition (a).

**2.6 Interlocutory Injunction Delay** – If a third party not in any way related to or affiliated with the Purchaser commences a Court action in the Supreme Court of British Columbia and, during the currency of this agreement, obtains an interlocutory injunction that prevents:

- (a) an approving authority from approving the Subdivision Plan under section 2.5(a);  
or
- (b) the council of the Vendor from adopting the zoning amendment bylaw contemplated under section 2.5(c);

the date for exercise of the Option under section 2.2 and the date for satisfaction of all of the conditions under section 2.5 will each be extended from the date such injunction becomes effective until such time as the Supreme Court decides whether or not the injunction is permanent, provided that in no circumstances will those dates extend beyond October 31, 2010 and October 29, 2010, respectively, unless the parties otherwise agree in writing.

### ARTICLE 3 - PURCHASE AND SALE

**3.1 Purchase and Sale** – If the Purchaser exercises the Option in accordance with Article 2, the Purchaser will purchase from the Vendor, and the Vendor will sell to the Purchaser, the Land, free and clear of all liens, charges and encumbrances, except for the Permitted Encumbrances, for the Purchase Price, on the terms and conditions of this agreement.

**3.2 Payment of Purchase Price** – On the Completion Date, the Purchaser will pay the Purchase Price, adjusted pursuant to Section 3.5, except that the Purchaser will pay the Extension Price Increase amount by way of certified cheque or solicitor's trust cheque made payable to the Vendor or the Vendor's Solicitors at the following times:

- a. The Purchaser shall pay to the Vendor fifty percent (50%) of the Extension Price Increase upon the earlier of (i) the date of approval of application for registration in the LTO of any plan of subdivision (including, for clarity, a strata plan of any kind under the *Strata Property Act* (British Columbia)) of the Land following Completion; and (ii) the date that is 2 years following the Completion Date.

- b. The Purchaser shall pay the remaining portion of the Extension Price Increase to the Vendor upon the earlier of (i) the date of application for registration in the LTO of any plan of subdivision (including, for clarity, a strata plan of any kind under the *Strata Property Act* (British Columbia)) of the Land which marks the commencement of Phase II of the Purchaser's Development; and (ii) the date that is 4 years following the Completion Date.

The deferred Extension Price Increase shall not bear interest thereon. As security for its obligation to pay the Extension Price Increase, the Purchaser shall deliver to the Vendor on Completion an irrevocable, unconditional and auto-renewing letter of credit in a form acceptable to the Vendor in the amount of the Extension Price Increase, which letter of credit the Vendor may draw upon if the Purchaser fails to pay the Extension Price Increase in accordance with this section. The Purchaser will obtain the Vendor's approval of the form of the letter of credit at least 7 days before the Completion Date. The Purchaser will deliver the letter of credit to the Purchaser's Solicitors with the payment and other documents in accordance with section 3.7(a) and the Purchaser's Solicitors will deliver the letter of credit to the Vendor's Solicitors with the adjusted purchase price in accordance with section 3.7(c). The amount of the letter of credit will be reduced as the Purchaser makes payment under this section.

- 3.3 **Additional Purchase Price Increase** – The Purchase Price will be increased by the amount of the increase (if any) in the B.C. Assessment Authority assessed value of the Land (including the total amount of any increase in the assessed value of the parcels that presently include Lot A) from the assessment made in 2008 to the assessment made in 2009.
- 3.4 **Title and Possession** – On the Completion Date, the Vendor will:
- (a) convey the estate in fee simple of the Land to the Purchaser free and clear of all liens, charges and encumbrances except for the Permitted Encumbrances; and
  - (b) give vacant possession of the Land to the Purchaser, subject only to the Permitted Encumbrances.
- 3.5 **Adjustments** – All adjustments to the Purchase Price in respect of the Land, both incoming and outgoing, usually the subject of adjustments between a vendor and a purchaser in connection with the purchase and sale of land, including adjustments of property taxes, utilities and rents, will be made up to and including the Completion Date. The Purchaser will pay to the Vendor an adjustment for property taxes in the usual manner based on the District's determination of the property taxes that would have been payable for the calendar year of the Completion Date had the Land been subject to property taxation during that year. The Option Price and, if it has been paid, the Option

Extension Fee, will, as part of these adjustments, be credited (without interest) against the Purchase Price in favour of the Purchaser.

### 3.6 Closing Documents –

- (a) No later than 5 days before the Completion Date, the Purchaser will cause the Purchaser's Solicitors to deliver to the Vendor's Solicitors:
  - (i) the Transfer, to be approved and executed by the Vendor;
  - (ii) the Golf Course Covenant, Development Agreement, Development Agreement Covenant, School Site Covenant and the Re-Purchase Option, to be executed by the Vendor;
  - (iii) 2 copies of the Vendor's Statement of Adjustments, to be approved and executed by the Vendor; and
  - (iv) the declaration in the form attached as Schedule B to this agreement, duly executed by the Purchaser, providing that the Purchaser will pay, or otherwise be responsible for any GST payable.
- (b) On or before the Completion Date, the Vendor will cause the Vendor's Solicitors to deliver to the Purchaser's Solicitors, the Utility SRWs and Plans, Transfer, the Golf Course Covenant, the Development Agreement, the Development Agreement Covenant, the School Site Covenant, the Re-Purchase Option and the Vendor's Statement of Adjustments, each duly executed, and in registrable form, as applicable, on behalf of the Vendor.

### 3.7 Completion – On or before the Completion Date:

- (a) the Purchaser will pay the adjusted Purchase Price to the Purchaser's Solicitors in trust, deliver the Development Agreement Security to the Purchaser's Solicitors and execute and deliver to the Purchaser's Solicitors the Golf Course Covenant, the Development Agreement, the Development Agreement Covenant, the School Site Covenant, the Re-Purchase Option and the Development Agreement Covenant.
- (b) forthwith after the payment of the adjusted Purchase Price under section 3.7(a) and after receipt of the Transfer from the Vendor's Solicitors under section 3.6(b), the Purchaser will cause the Purchaser's Solicitors to file the Utility SRWs and Plans, Subdivision Plan, Transfer, Re-Purchase Option, Development Agreement Covenant, School Site Covenant and Golf Course Covenant in the LTO.
- (c) upon the Purchaser's Solicitors being satisfied after deposit of the Subdivision Plan, Transfer, Option, Development Agreement Covenant, School Site Covenant

and Golf Course Covenant for registration in the LTO that a search of the property index maintained by the LTO discloses that there are no transfers, liens, charges or encumbrances, other than the Subdivision Plan, the Transfer and the Permitted Encumbrances, registered or pending registration against title to the Land, the Purchaser will cause the Purchaser's Solicitors to deliver to the Vendor's Solicitors the Re-Purchase Option, Development Agreement, Development Agreement Covenant, School Site Covenant, the Golf Course Covenant, the Development Agreement Security and a solicitor's certified trust cheque in the amount of the adjusted Purchase Price made payable to the Vendor's Solicitors, in trust.

The parties agree that all requirements of this section are concurrent requirements and that nothing will be Completed on the Completion Date until everything required to be done by this section is done.

- 3.8 **Risk** – The Land is at the Vendor's risk until Completion and after Completion it is at the Purchaser's risk.
- 3.9 **Access** – The Purchaser, its agents and employees have a licence, exercisable on 24 hours prior written notice to the Vendor, to enter upon the Land from time to time prior to the Completion Date, at the Purchaser's sole risk and expense, for the purpose of making inspections, surveys, tests and studies of the Land, so as to enable the land to be properly approved for subdivision as set out in the Subdivision Plan. The Purchaser agrees to:
- (a) release and indemnify, and hold harmless, the Vendor from and against any and all actions, causes of actions, liability, demands, losses, costs and expenses (including legal fees and disbursements) which the Vendor or any third party may suffer, incur, be subject to or liable for, arising out of or in any way related to or in connection with the exercise by the Purchaser of its rights under this section; and
  - (b) leave the Land in the same condition as that in which the Purchaser found the Land, including by removing any equipment, refuse or other matter brought onto the Land by the Purchaser or its agents or contractors.
- 3.10 The Vendor hereby authorizes the Purchaser to, during the currency of this agreement, make applications for all development, zoning amendment, building or related approvals with respect to the Subdivision Plan and the Land on the Vendor's behalf and to permit application signs to be posted thereon after the date hereof.

**ARTICLE 4 -PURCHASER'S REPRESENTATIONS, WARRANTIES,  
COVENANTS, ACKNOWLEDGEMENTS, AGREEMENTS AND  
ASSUMPTIONS**

- 4.1 **Purchaser's Representations, Warranties and Covenants** – The Purchaser hereby represents and warrants to the Vendor that:
- (a) the Purchaser has taken all necessary or desirable actions, steps and other proceedings to approve or authorize, validly and effectively, the entering into, and the execution, delivery and performance of this agreement;
  - (b) the Purchaser is registered under the *Excise Tax Act* (Canada) for the purposes of GST and the Purchaser's registration number is 89784 1938 RT0001;
  - (c) the Purchaser is in good standing with the Registrar of Companies for British Columbia as an extra-provincially registered corporation and has made all necessary filings with that registrar as required by the *Business Corporations Act* (British Columbia); and
  - (d) the Purchaser is duly incorporated and validly existing under the laws of Nova Scotia and has the power and capacity to enter into and carry out the transaction provided for in this agreement.
- 4.2 **Acknowledgments and Agreements by Purchaser** – The Purchaser acknowledges and agrees that:
- (a) the Vendor sells and the Purchaser purchases the Land on an "as is" basis and condition;
  - (b) the Vendor has not made any representations, warranties or agreements as to the condition or quality of the Land, including as to:
    - (i) the subsurface nature or conditions of the Land (including soil type, hydrology and geotechnical quality or stability);
    - (ii) the environmental condition of the Land (including regarding Contaminants in, on, under or migrating to or from the Land) or regarding the compliance of the Land, or past or present activities on it, with any Environment Laws;
    - (iii) the suitability of the Land for the Purchaser's intended use for, or development of, the Land; or
    - (iv) access to or from the Land;
  - (c) it is the sole responsibility of the Purchaser to satisfy itself with respect to:
    - (i) the environmental condition of the Land (including regarding Contaminants in, on or under or migrating to or from the Land);

- (ii) regarding the compliance of the Land or past or present activities on it, with any Environmental Laws, including by conducting any reports, tests, investigations, studies, audits and other enquiries that the Purchaser, in its sole discretion, considers prudent;
- (d) effective from and after Completion, the Purchaser:
- (i) assumes and is solely responsible for, and releases the Vendor (and its elected and appointed officials, employees, contractors and agents) from and against, any and all actions, causes of action, liabilities, demands, claims, losses, damages, costs (including remediation costs (as defined in the *Environmental Management Act* (British Columbia)), the costs of complying with any Environmental Laws and any consultant and legal fees, costs and disbursements), expenses, fines and penalties whether occurring, incurred, accrued or caused before, on or after Completion, which the Purchaser or any other person has or may have arising out of or in any way related to or in connection with the Land, including the presence of Contaminants in, on, under or migrating to or from the Land, and any mandatory or voluntary remediation, mitigation or removal of any Contaminants; and
  - (ii) will indemnify and save harmless the Vendor (and its elected and appointed officials, employees, contractors and agents) from and against, any and all actions, causes of action, liabilities, demands, claims, losses, damages, costs (including remediation costs (as defined in the *Environmental Management Act* (British Columbia)), the costs of complying with any Environmental Laws and any consultant and legal fees, costs and disbursements), expenses, fines and penalties whether occurring, incurred, accrued or caused before, on or after Completion, which the Vendor, or its elected or appointed officials, employees, contractors or agents, or any third party, may suffer, incur, be subject to or liable for, whether brought against anyone or more of them by the Purchaser or any other person, or any government authority or agency, arising out of or in any way related to or in connection with the Land, including the presence of Contaminants in, on, under or migrating to or from the Land, and any mandatory or voluntary remediation, mitigation or removal of any Contaminants;
- (e) without limiting section 4.2(d), for the purposes of allocation of remediation costs pursuant to the *Environmental Management Act* (British Columbia), after completion the Purchaser will be, as between the Vendor and the Purchaser, solely responsible for the costs of any mandatory or voluntary remediation of the Land under that Act and this binds the Purchaser with respect to any allocation of remediation costs, as defined by that Act, by any procedure under that Act;

- (f) it is the sole risk and responsibility of the Purchaser to determine the area of the Land; and
  - (g) the Vendor has not made any representations, warranties or agreements with the Purchaser as to whether or not any GST is payable by the Purchaser in respect of the sale of the Land to the Purchaser.
- 4.3 **Site Profile** – The Purchaser hereby waives delivery by the Vendor to the Purchaser of a site profile (as defined in the *Environmental Management Act* (British Columbia)).

#### ARTICLE 5 - CONDITIONS PRECEDENT

- 5.1 **Mutual Conditions Precedent** – The purchase and sale transaction arising from the exercise of the Option is conditional upon the fulfillment of the following conditions, which are for the benefit of both parties and may not be waived:
- (a) On or before the Completion Date, the Vendor will have obtained all of the issued duplicate indefeasible titles for the Land or provisional Certificates of Title in lieu thereof.

The above conditions are for the benefit of both parties and cannot be waived. If any of the above conditions is not satisfied within the applicable time provided, this agreement will automatically terminate and the parties will have no further obligations hereunder.

#### ARTICLE 6 - MISCELLANEOUS

- 6.1 **Fees and taxes** – The Purchaser will pay, as and when due and payable:
- (a) any property transfer tax payable under the *Property Transfer Tax Act* (British Columbia);
  - (b) LTO registration fees in connection with the registration of the closing documents under this agreement;
  - (c) its own legal fees and disbursements; and
  - (d) any GST payable under the *Excise Tax Act* (Canada) in respect of the grant of the Option, the extension of the Option exercise date and the transfer and conveyance of the Land to the Purchaser, with the Purchaser and the Vendor agreeing that the Option Price, Option Extension Fee and the Purchase Price do not include GST.
- 6.2 **Currency** – All dollar amounts referred to in this agreement are Canadian dollars.

- 6.3 **Subdivision Plan & Rezoning Application** – The Purchaser will, at its expense:
- (a) prepare the Subdivision Plan,
  - (b) apply for approving officer approval and any other necessary governmental approvals of the Subdivision Plan,
  - (c) satisfy all requirements of the approving officer and any other governmental authorities in order to obtain all necessary Subdivision Plan approvals,
  - (d) pay all fees, costs and charges related to the approvals of the Subdivision Plan and the subdivision to create Lot A;
  - (e) enter into a subdivision servicing agreement with the Vendor in accordance with applicable bylaws of the Vendor as may be required thereby in order to subdivide Lot A from the lands presently comprising Lot A as if the Purchaser were the owner of Lot A; and
  - (f) make the rezoning application contemplated in section 2.5(c), pay all fees and charges payable in connection therewith and make all commercially reasonable efforts to obtain the zoning amendment as if the Purchaser were the owner of the Land.
- 6.4 **Preparation of Documents and Clearing Title** – The Purchaser will at its expense prepare all necessary conveyancing documentation. At its expense, the Vendor will clear title to the Land, subject only to the Permitted Encumbrances, except that the Purchaser will, at its expense, be responsible for preparing, obtaining the execution of and registering discharges of Lease KT88971 and Right of First Refusal KT88972, which discharges may be registered by the Purchaser at the same time as the registration of the closing documents necessary to complete the transaction contemplated by this agreement.
- 6.5 **Priority** – The Purchaser will, at its expense, cause all charges and encumbrances that are to be registered on Completion under this agreement to be registered in priority to all financial liens, charges and encumbrances (including leases, options to purchase and rights of first refusal) registered or pending registration on Completion and will apply to register executed priority agreements for that purpose at the same time as it applies to register such charges and encumbrances.
- 6.6 **Utility SRW** – Upon their form and content being approved by both parties in accordance with section 2.5(d), the Vendor will be responsible for the preparation and execution of the Utility SRWs and Plans.
- 6.7 **Option Registration** – At the request of the Purchaser, the Vendor will execute this agreement in a form registrable in the LTO, to be prepared and registered by and at the expense of the Purchaser. The Purchaser acknowledges, however, that this agreement

may not be registrable in that in applies to only portions of the parcels that presently include Lot A.

- 6.8 **Further Assurances** - Each of the parties will at all times execute and deliver at the request of the other all such further documents, deeds and instruments, and do and perform such other acts as may be reasonably necessary to give full effect to the intent and meaning of this agreement.
- 6.9 **Notice** - Any notice, direction, demand, approval, certificate or waiver (any of which constitutes a "Notice" under this section) which may be or is required to be given under this agreement will be in writing and be delivered or sent by fax:

to the Vendor:

District of Summerland  
Box 159  
Summerland, B.C. V0H 1Z0  
Fax Number: (250) 494-1415  
Attention: Mr. Don DeGagne

with a copy to:

Lidstone, Young, Anderson  
Barristers & Solicitors  
1616 – 808 Nelson Street  
Vancouver, B.C. V6Z 2H2

Fax Number: (604) 689-3444  
Attention: Mr. Michael E. Quattrocchi

to the Purchaser:

3093467 Nova Scotia ULC  
1122 Willow Street, Suite 200  
San Jose, California 95125

Fax Number: (408) 279-3678  
Attention: Bill Baron

with a copy to:

1050 Eckhardt Avenue,  
Penticton, B.C., V2A 2C3

Attention: Randy Kowalchuk

and to the Purchaser's Solicitors:

800 – 1708 Dolphin Avenue  
Kelowna B.C. V1Y 9S4

Fax Number: (250) 861-8772  
Attention: Ross Langford

or to such other address or fax number of which notice has been given as provided in this Article.

Any Notice that is delivered is to be considered given on the day it is delivered and any Notice that is sent by fax is to be considered given on the day it is sent except that if, in either case, that day is not a Business Day, it is to be considered given on the next Business Day after it is sent.

**6.10 No Effect on Powers** – This agreement does not:

- (a) affect or limit the discretion, rights, duties or powers of the Vendor or the approving officer for the Vendor under the common law or any statute, bylaw or other enactment nor does this agreement date or give rise to, nor do the parties intend this agreement to create, any implied obligations concerning such discretionary rights, duties or powers;
- (b) affect or limit the common law or any statute, bylaw or other enactment applying to the Land or the land comprising Lot A; or
- (c) relieve the Purchaser from complying with any common law or any statute, regulation, bylaw or other enactment.

**6.11 Time of Essence** - Time is of essence of this agreement and the conveyance and transfer for which it provides.

**6.12 Tender** - Any tender of documents or money may be made upon the parties at their respective addresses set out in this agreement or upon their respective solicitors.

**6.13 Change of Solicitors** – If a party wishes to change its solicitors it will give notice to the other party of such change.

**6.14 No Other Agreements** - This agreement is the entire agreement between the parties regarding its subject and it terminates and supersedes all representations, warranties, promises and agreements regarding its subject.

- 6.15 **Assignment** – The Purchaser cannot assign all or any part of this agreement, or the benefit thereof, without the prior written consent of the Vendor. The sale, transfer or issuance of any shares in the capital of the Purchaser to individuals who are not members of the Brandenburg or Agur families or to corporations controlled by such individuals (with control being determined in accordance with section 2 of the *Business Corporations Act* (British Columbia)) will be deemed to be an assignment for the purpose of this section and in connection therewith the Purchaser will from time to time upon the request of the Vendor provide the Vendor with such information and records as may be necessary in order for the Vendor to satisfy itself with respect to the ownership of the shares of the Purchaser.
- 6.16 **Benefit** - This agreement enures to the benefit of and is binding upon the parties and their respective heirs, executors, administrators, successors and assigns.
- 6.17 **Counterparts** – This agreement may be executed in multiple counterparts, each of which is to be deemed to be an original and all of which together constitute one and the same agreement.
- 6.18 **Execution by Fax** – This agreement may be executed by the parties and transmitted by fax and if so executed and transmitted, this agreement will be for all purposes as effective as if the parties had executed and delivered an original agreement.
- 6.19 **Schedules** – The following are the Schedules to this agreement and form an integral part of this agreement:
- Schedule A – Permitted Encumbrances
  - Schedule B – Purchaser's GST Declaration and Indemnity
  - Schedule C – Sketch Plan of Subdivision to Create Lot A
  - Schedule D –Drawing of Utility SRW Areas
- 6.20 **Modification** - This agreement may not be changed except by an instrument in writing signed by the parties or by their successors or assigns, but the parties agree that the Completion Date may be changed by their agreement through their respective solicitors upon instructions to their solicitors as evidenced promptly thereafter in writing by their solicitors.
- 6.21 **Interpretation** - Wherever the singular is used or neuter is used in this agreement, it includes the plural, the feminine, the masculine or body corporate where the context or the parties so required.
- 6.22 **Governing Law** – This agreement will be governed by and construed in accordance with the laws of British Columbia.
- 6.23 **No Real Estate Agent** – The Purchaser represents and warrants to the Vendor that no real estate, or other agent, has assisted the Purchaser, or in any way directly or indirectly

participated in the making of this agreement and that no real estate agent or other agent is entitled to any commission or other remuneration in any way in connection with this agreement, or the sale and purchase of the Land between the Vendor and the Purchaser, and the Purchaser agrees to indemnify and hold the Vendor harmless from and against any such commission or remuneration, and any action, cause of action or liability relating thereto. Notwithstanding the foregoing, for clarity purposes, the Purchaser advises that one of its principals, Robin Agur, is licensed pursuant to the Real Estate Services Act however he is not entitled to any fee or commission as a result of the transaction set out herein.

6.24 **Non-Merger** – None of the provisions of this agreement will merge in the transfer of the Land or any other documents delivered on the Completion Date and the provisions of this agreement will survive Completion.

As evidence of their agreement to be bound by the terms and conditions of this agreement, the parties have executed and delivered this agreement below on the dates set out below:

**3093467 NOVA SCOTIA ULC** by its authorized signatories:

Name: \_\_\_\_\_

*La R. Beard*

Name: \_\_\_\_\_

Date: 7/23/08

**DISTRICT OF SUMMERLAND** by its authorized signatories:

Mayer: \_\_\_\_\_

Clerk: \_\_\_\_\_

Date: July 25/08

*Deputy*

**SCHEDULE A**

**Permitted Encumbrances**

Legal Notation: "Land herein may be subject to a charge under the Municipal and Improvement District Rehabilitation and Development Act see C8500"

Statutory Right of Way KL33774 in favour of BC Tel

Section 219 Covenant LB19663

**SCHEDULE B**

**Goods and Services Tax Declaration and Indemnity**

To: District of Summerland (the "Vendor")

Re: An agreement between the Vendor and 3093467 Nova Scotia ULC (the "Purchaser") being an Option to Purchase and Purchase and Sale Agreement dated for reference \_\_\_\_\_ (the "Agreement") in respect of the sale and purchase of the land legally described in the attached Schedule to this Declaration (the "Property")

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The Purchaser hereby agrees with the Vendor that:

1. The Purchaser will indemnify and save harmless the Vendor from any GST, penalty, interest or other amounts which may be payable by or assessed against the Vendor under the *Excise Tax Act* ("ETA") as a result of, or in connection with, the Vendor's failure to collect and remit any GST applicable on the sale, and conveyance of the Property to the Purchaser.
2. The Purchaser is registered under Subdivision d of Division V of Part IX of the ETA for the collection and remittance of goods and services tax ("GST") and its registration number is ●.
3. The Purchaser will remit directly to the Receiver General of Canada the GST payable, and file the prescribed Form GST 60 pursuant to subsection 228(4) of the ETA in connection with the sale and conveyance of the Property.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

**3093467 NOVA SCOTIA ULC**

by its authorized signatory:

\_\_\_\_\_  
Authorized Signatory

# Schedule 'C'

1. The following is a list of the names of the persons who have been appointed to the various positions in the office of the Secretary of the State, and the dates of their appointments:

2. The following is a list of the names of the persons who have been appointed to the various positions in the office of the Secretary of the State, and the dates of their appointments:

3. The following is a list of the names of the persons who have been appointed to the various positions in the office of the Secretary of the State, and the dates of their appointments:

4. The following is a list of the names of the persons who have been appointed to the various positions in the office of the Secretary of the State, and the dates of their appointments:

5. The following is a list of the names of the persons who have been appointed to the various positions in the office of the Secretary of the State, and the dates of their appointments:



Proposed Structure  
Acres 0.5000  
Area 1

SD L 2543

SCHEDULE "D"

DENIKE ST