

DATE OF MEETING January 17, 2022

AUTHORED BY BILL CORSAN, DIRECTOR, CORPORATE AND BUSINESS DEVELOPMENT

SUBJECT APPROVAL OF ARTICLES OF INCORPORATION AND SHAREHOLDER AGREEMENT FOR THE NANAIMO PROSPERITY CORPORATION

OVERVIEW

Purpose of Report

To seek Council approval to establish the Nanaimo Prosperity Corporation by formally approving the Articles of Incorporation and Shareholder Agreement. |

Recommendation

That Council:

1. approve the Articles of Incorporation and Shareholder Agreement for the Nanaimo Prosperity Corporation;
2. appoint a Council member as a non-voting director to the Board of the Nanaimo Prosperity Corporation until November 2022; and
3. direct Staff to work with the Nanaimo Prosperity Corporation shareholders to host the inaugural Board meeting no later than 2022-MAR-30.

BACKGROUND

Council has expressed a strong commitment to economic development. The *2019-2022 Strategic Plan* identifies Economic Health as one of the four pillars. The plan specifically identifies the need to select an economic development model and complete an Economic Development Strategy.

Considerable work has been advanced on the economic development file in the past three years. A review of the Economic Development Function was completed in the fall of 2019. Council established the Economic Development Task Force (EDTF) to prepare an economic development strategy and to further define the economic development corporation. This work was completed at the end of 2020.

At the 2021-FEB-01 Council Meeting, it was moved that Council:

- “1. endorse the final Economic Development Strategy;
2. endorse the External Corporation Charter; and
3. direct Staff to work with the Class B shareholders to prepare Letters of Incorporation and return to an upcoming meeting for Council approval.” |

Since February 2021, the City and the shareholders have met on numerous occasions to develop and review the Articles of Incorporation and the Shareholders Agreement for the Corporation.

The final agreements have also been approved by the Inspector of Municipalities as required under Section 185[1]) of the *Community Charter*.

The City is now in a position to formally establish the Nanaimo Prosperity Corporation.

Nanaimo Prosperity Corporation – Articles of Incorporation & Shareholder Agreement

The framework for the Nanaimo Prosperity Corporation (NPC) was originally developed by the EDTF with the assistance of Neilson Strategies. In subsequent conversations with the shareholders, minor adjustments have been incorporated into the two foundational documents (Attachment A & B). The most significant change to the structure of the Corporation during these discussions has been Vancouver Island University is now designated as a Class C Shareholder and not required to provide an annual financial contribution.

The key elements of the NPC Shareholder Agreement are as follows:

Purpose: The Corporation is the economic development corporation through which business, government, First Nation, and community partners collaborate to build Nanaimo's economy and increase the level of shared prosperity enjoyed by those who live here.

Mandate: The Corporation will maintain and update the Economic Development Strategy, develop and undertake initiatives to attract business and employers to the community, coordinate the sector-specific activities, and develop initiatives to retain and expand business.

Ownership: The Corporation is jointly owned by the City of Nanaimo (Class A shareholder) and five other governments and organizations (Class B & C shareholders), including (in alphabetical order):

- Nanaimo Airport Commission - Class B
- Nanaimo Chamber of Commerce - Class B
- Nanaimo Port Authority - Class B
- Snuneymuxw First Nation - Class B
- Vancouver Island University – Class C

Board of Directors: The Corporation is comprised of nine voting directors. This includes six directors, with representation from each shareholder. In addition there are three members at large appointed by the shareholders through a public call for applicants. In appointing directors, the Board will consider the skill set and backgrounds of the applicants and the economic sectors they represent. At least one director should be from the social services sector. The City of Nanaimo is represented on the board by a senior staff member and one elected official as a non-voting director.

Term: Each director is appointed for a term of two-years and may be reappointed by the shareholders for two (2) consecutive additional terms for a maximum period of six (6) years.

Funding: The City of Nanaimo is a Class A shareholder and will provide the bulk of the base funding. The Class B shareholders are committed to providing a \$10,000 cash or in-kind contribution in 2022 through to 2025 (subject to approval of their respective boards). Class C Shareholders are not obligated to provide funding to the NPC.

Remuneration: All board members serve without remuneration.

Voting: All shareholders (Class A, B & C) participate in and receive one vote on Board decisions. The City of Nanaimo as the only Class A Shareholder makes all decisions related to borrowing of money, change to the corporation's status or the inclusion of additional Class A Shareholders. Two-thirds of the NPC's Shareholders are required to create or transfer Class B or C shares, make any material change to or within the business of the company or the composition and authority of and method of appointment to the Board of directors.

Three-Year Review: At the end of the initial three years, the City will initiate and complete a review of the NPC to examine the Corporation's mandate, structure, funding and performance and to assess the level of community and shareholder support for the organization.

Operations: The NPC will hire its own Executive Director, lease its own office space in downtown Nanaimo and is responsible for its own operational needs, including those related to financial management and accounting, legal matters, human resources, purchasing, information technology and others.

Financial Considerations

Staff were advised through the development of the Economic Development Strategy that comparable communities to the City of Nanaimo allocate between \$750,000 and \$1,000,000 towards economic development.

The Economic Development Function Service Review recommended that economic development be delivered in Nanaimo through a hybrid approach with both an internal and external function.

The internal function has an annual budget of \$323,100 in the 2022-2026 Financial Plan. These funds are largely committed to staffing through an economic development manager and economic development officer.

The approved 2022-2026 Provisional Financial Plan has a budget of \$407,100 allocated towards the NPC in 2022 for the annual operation of the Corporation funded from general revenue.

Under the Shareholder Agreement, the shareholders will provide an additional \$40,000 per annum in cash or in-kind contributions to the corporation. \$236,650 will be carried over from the City's 2021 budget to support establishment of the Corporation increasing the 2022 budget to \$643,750 for the 2022 – 2026 Final Financial Plan.

NEXT STEPS

The City is required to appoint a Council member as a non-voting director for the remainder of the Council term (November 2022). In addition, a senior Staff member will be selected by the Chief Administrative Officer to attend the Board meetings as a voting director.

The next steps for the NPC are as follows

- Host an inaugural board meeting before the end of 2022-MAR-30;
- Recruit and hire an executive director;
- Secure shared office space with partners such as the Chamber of Commerce and Tourism Nanaimo;
- Prepare policies and procedures for the new Corporation;
- Advertise for three directors, including one from the social services;
- Prepare a 2022 work plan based on the Economic Development Strategy.

OPTIONS

1. That Council:
 1. approve the Articles of Incorporation and Shareholder Agreement for the Nanaimo Prosperity Corporation;
 2. appoint a Council member as a non-voting director to the Board of the Nanaimo Prosperity Corporation until November 2022; and
 3. direct Staff to work with the Nanaimo Prosperity Corporation shareholders to host the inaugural Board meeting no later than 2022-MAR-30.
 - The advantages of this option: Establishing the Corporation will meet one of Council's key Strategic Priorities. The Corporation requires the City to work in partnership with the City and Region's key shareholders to deliver economic benefits to the community. Creation of the Corporation will enable the City to enhance delivery of the economic development function and commence implementation of the Economic Development Strategy.
 - The disadvantages of this option: None identified.
 - Financial Implications: An annual budget of \$407,100 has been allocated to the NPC. In 2022, additional funding of \$643,750 has been carried over to account for start-up costs of the new corporation.
2. That Council provide alternative direction to Staff. |

SUMMARY POINTS

- Council has expressed a strong commitment to economic development. The *2019-2022 Strategic Plan* identifies Economic Health as one of the four pillars. Council established an Economic Development Task Force to develop an economic development strategy and to further define the economic development corporation.
- At the 2021-FEB-01 Council Meeting Council approved the Economic Development Strategy and directed staff to establish the Nanaimo Prosperity Corporation.

- The City and its shareholders have prepared Articles of Incorporation and a Shareholder Agreement for the Nanaimo Prosperity Corporation. The Inspector of Municipalities has approved the creation of the Corporation.
- The inaugural board meeting of the Nanaimo Prosperity Corporation will be held by 2022-MAR-30. The Board will advertise for three additional director positions.
- Council has allocated \$643,750 in 2022 to establish the Nanaimo Prosperity Corporation.
- Next steps include recruitment of an Executive Director, securing shared office space and preparing policies and procedures.

ATTACHMENTS:

ATTACHMENT A: Articles of Incorporation
ATTACHMENT B: Shareholder Agreement

Submitted by:

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Concurrence by:

Laura Mercer
Director, Finance

ATTACHMENT A

Incorporation number: [number]

Nanaimo Prosperity Corporation

(the “Company”)

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1. Interpretation

1.1. Definitions

In these Articles, unless the context otherwise requires:

- 1) **“appropriate person”** has the meaning assigned in the *Securities Transfer Act*;
- 2) **“board of directors”, “directors”, and “board”** mean the directors or sole director of the Company for the time being;
- 3) **“Business Corporations Act”** means the *Business Corporations Act* (British Columbia) from time to time in force and all amendments thereto and includes all regulations and amendments thereto made pursuant to that Act;
- 4) **“Community Charter”** means the *Community Charter* (British Columbia) from time to time in force and all amendments thereto and includes all regulations and amendments thereto made pursuant to that Act;
- 5) **“Income Tax Act”** means the *Income Tax Act* (Canada) from time to time in force and all amendments thereto and includes all regulations and amendments thereto made pursuant to that Act;
- 6) **“Interpretation Act”** means the *Interpretation Act* (British Columbia) from time to time in force and all amendments thereto and includes all regulations and amendments thereto made pursuant to that Act;
- 7) **“legal personal representative”** means the personal or other legal representative of a shareholder;
- 8) **“Local Government Act”** means the *Local Government Act* (British Columbia) from time to time in force and all amendments thereto and includes all regulations and amendments thereto made pursuant to that Act;
- 9) **“non-voting director”** means a director serving on the board of directors that is not entitled to vote at a meeting of directors;
- 10) **“protected purchaser”** has the meaning assigned in the *Securities Transfer Act*;
- 11) **“registered address”** of a shareholder means the shareholder’s address as recorded in the central securities register;
- 12) **“securities legislation”** means statutes concerning the regulation of securities markets and trading in securities and the regulations, rules, forms and schedules under those statutes, all as amended from time to time, and the blanket rulings and orders, as amended from time to time, issued by the securities commissions or similar regulatory authorities appointed under or pursuant to those statutes; **“Canadian securities legislation”** means the securities legislation in any province or territory of Canada and includes the *Securities Act* (British Columbia); and **“U.S.**

securities legislation” means the securities legislation in the federal jurisdiction of the United States and in any state of the United States and includes the *Securities Act* of 1933 and the *Securities Exchange Act* of 1934;

- 13) **“shareholders”** means, collectively, all the shareholders of the Company, regardless of class of share;
- 14) **“special majority”** means a 2/3 of the votes cast on a resolution of the Company by those entitled to vote on such a resolution;
- 15) **“Statutory Reporting Company Provisions”** has the meaning assigned in the *Business Corporations Act*;
- 16) **“Securities Transfer Act”** means the *Securities Transfer Act* (British Columbia) from time to time in force and all amendments thereto and includes all regulations and amendments thereto made pursuant to that Act; and
- 17) **“voting director”** means a director that is entitled to vote at a meeting of directors.

1.2. Business Corporations Act and Interpretation Act Definitions Applicable

The definitions in the *Business Corporations Act* and the definitions and rules of construction in the *Interpretation Act*, with the necessary changes, so far as applicable, and unless the context requires otherwise, apply to these Articles as if they were an enactment. If there is a conflict between a definition in the *Business Corporations Act* and a definition or rule in the *Interpretation Act* relating to a term used in these Articles, the definition in the *Business Corporations Act* will prevail in relation to the use of the term in these Articles. If there is a conflict or inconsistency between these Articles and the *Business Corporations Act*, the *Business Corporations Act* will prevail.

2. Shares and Share Certificates

2.1. Authorized Share Structure

The authorized share structure of the Company consists of shares of the class or classes and series, if any, described in the Notice of Articles of the Company.

2.2. Form of Share Certificate

Each share certificate issued by the Company must comply with, and be signed as required by, the *Business Corporations Act*.

2.3. Shareholder Entitled to Certificate or Acknowledgment

Unless the shares of which the shareholder is the registered owner are uncertificated shares within the meaning of the *Business Corporations Act*, each shareholder is entitled, without charge, to (a) one share certificate representing the shares of each class or series of shares registered in the shareholder’s name or (b) a non-transferable written acknowledgment of the shareholder’s right to obtain such a share certificate, provided that in respect of a share held jointly by several persons, the Company is not bound to issue more than one share certificate or acknowledgment and delivery of a share certificate, or an

acknowledgment to one of several joint shareholders or to a duly authorized agent of one of the joint shareholders will be sufficient delivery to all.

2.4. Delivery by Mail

Any share certificate or non-transferable written acknowledgment of a shareholder's right to obtain a share certificate may be sent to the shareholder by mail at the shareholder's registered address and neither the Company nor any director, officer, or agent of the Company is liable for any loss to the shareholder because the share certificate or acknowledgment is lost in the mail or stolen.

2.5. Replacement of Worn Out or Defaced Certificate or Acknowledgement

If the directors are satisfied that a share certificate or a non-transferable written acknowledgment of the shareholder's right to obtain a share certificate is worn out or defaced, they must, on production to them of the share certificate or acknowledgment, as the case may be, and on such other terms, if any, as they think fit:

- 1) order the share certificate or acknowledgment, as the case may be, to be cancelled; and
- 2) issue a replacement share certificate or acknowledgment, as the case may be.

2.6. Replacement of Lost, Destroyed, or Wrongfully Taken Certificate

If a person entitled to a share certificate claims that the share certificate has been lost, destroyed, or wrongfully taken, the Company must issue a new share certificate, if that person:

- 1) so requests before the Company has notice that the share certificate has been acquired by a protected purchaser;
- 2) provides the Company with an indemnity bond sufficient in the Company's judgment to protect the Company from any loss that the Company may suffer by issuing a new certificate; and
- 3) satisfies any other reasonable requirements imposed by the directors.

A person entitled to a share certificate may not assert against the Company a claim for a new share certificate where a share certificate has been lost, apparently destroyed, or wrongfully taken if that person fails to notify the Company of that fact within a reasonable time after that person has notice of it and the Company registers a transfer of the shares represented by the certificate before receiving a notice of the loss, apparent destruction, or wrongful taking of the share certificate.

2.7. Recovery of New Share Certificate

If, after the issue of a new share certificate, a protected purchaser of the original share certificate presents the original share certificate for the registration of transfer, then in addition to any rights under the indemnity bond, the Company may recover the new share certificate from a person to whom it was issued or any person taking under that person other than a protected purchaser.

2.8. Recognition of Trusts

Except as required by law or statute or these Articles, no person will be recognized by the Company as holding any share upon any trust, and the Company is not bound by or compelled in any way to recognize (even when having notice thereof) any equitable, contingent, future, or partial interest in any share or fraction of a share or (except as required by law or statute or these Articles or as ordered by a court of competent jurisdiction) any other rights in respect of any share except an absolute right to the entirety thereof in the shareholder.

3. Issue of Shares

3.1. Authorization of Issuance

The Company may issue, allot, sell, or otherwise dispose of the unissued shares, and issued shares held by the Company, at the times, to the persons, including directors, in the manner, on the terms and conditions and for the issue prices authorized by the Shareholders via resolution.

4. Share Registers

4.1. Central Securities Register

As required by and subject to the *Business Corporations Act*, the Company must maintain a central securities register. The directors may, subject to the *Business Corporations Act*, appoint an agent to maintain the central securities register. The directors may also appoint one or more agents, including the agent which keeps the central securities register, as transfer agent for its shares or any class or series of its shares, as the case may be, and the same or another agent as registrar for its shares or such class or series of its shares, as the case may be. The directors may terminate such appointment of any agent at any time and may appoint another agent in its place.

4.2. Closing Register

The Company must not at any time close its central securities register.

5. Share Transfers

5.1. Registering Transfers

The Company must register a transfer of a share of the Company if the Company or the transfer agent or registrar for the class or series of share to be transferred has received:

- (a) in the case where the Company has issued a share certificate in respect of the share to be transferred, that share certificate and a written instrument of transfer (which may be on a separate document or endorsed on the share certificate) made by the shareholder or other appropriate person or by an agent who has actual authority to act on behalf of that person;
- (b) in the case of a share that is not represented by a share certificate (including an uncertificated share within the meaning of the *Business Corporations Act* and including the case where the Company has issued a non-transferable written acknowledgment of

the shareholder's right to obtain a share certificate in respect of the share to be transferred), a written instrument of transfer made by the shareholder or other appropriate person or by an agent who has actual authority to act on behalf of that person; and

- (c) such other evidence, if any, as the Company or the transfer agent or registrar for the class or series of share to be transferred may require to prove the title of the transferor or the transferor's right to transfer the share, that the written instrument of transfer is genuine and authorized and that the transfer is rightful or to a protected purchaser.

5.1A. Waivers of Requirements for Transfer

The Company may waive any of the requirements set out in Article 5.1.

5.2. Form of Instrument of Transfer

The instrument of transfer in respect of any share of the Company must be either in the form, if any, on the back of the Company's share certificates or in any other form that may be approved by the company or the transfer agent for the class or series of shares to be transferred.

5.3. Transferor Remains Shareholder

Except to the extent that the *Business Corporations Act* otherwise provides, the transferor of shares is deemed to remain the holder of the shares until the name of the transferee is entered in a securities register of the Company in respect of the transfer.

6. Restrictions on Share Transfer and Shareholders

No shares shall be issued or transferred except via shareholders' resolution.

7. Acquisition of Company's Shares

7.1. Company Authorized to Purchase or Otherwise Acquire Shares

Subject to Article 7.2, the special rights or restrictions attached to the shares of any class or series of shares and the *Business Corporations Act*, the Company may, if authorized by the shareholders, purchase or otherwise acquire any of its shares at the price and upon the terms determined by the shareholders.

7.2. No Purchase, Redemption, or Other Acquisition When Insolvent

The Company must not make a payment or provide any other consideration to purchase, redeem, or otherwise acquire any of its shares if there are reasonable grounds for believing that:

- 1) the Company is insolvent; or
- 2) making the payment or providing the consideration would render the Company insolvent.

8. Borrowing Powers

The Company, if authorized by a shareholder's resolution, may:

- 1) borrow money in the manner and amount, on the security provided by the Class A Shareholder, from the sources and on the terms and conditions outlined in the relevant Class A shareholder's resolution;
- 2) issue bonds, debentures, and other debt obligations either outright or as security for any liability or obligation of the Company or any other person and at such discounts or premiums and on such other terms outlined in the relevant Class A shareholder's resolution;
- 3) guarantee the repayment of money by any other person or the performance of any obligation of any other person; and
- 4) mortgage, charge, whether by way of specific or floating charge, grant a security interest in, or give other security on, the whole or any part of the present and future assets and undertaking of the Company.

9. Alterations

9.1. Alteration of Authorized Share Structure

Subject to Article 9.2 and the *Business Corporations Act*, the Company may by special resolution of the shareholders:

- 1) create one or more classes or series of shares or, if none of the shares of a class or series of shares are allotted or issued, eliminate that class or series of shares;
- 2) increase, reduce, or eliminate the maximum number of shares that the Company is authorized to issue out of any class or series of shares or establish a maximum number of shares that the Company is authorized to issue out of any class or series of shares for which no maximum is established;
- 3) alter the identifying name of any of its shares; or
- 4) otherwise alter its shares or authorized share structure when required or permitted to do so by the *Business Corporations Act*,

and, if applicable, alter its Notice of Articles and, if applicable, its Articles, accordingly.

9.2. Special Rights or Restrictions

Subject to the *Business Corporations Act*, the Company may by special resolution of the shareholders:

- (1) create special rights or restrictions for, and attach those special rights or restrictions to, the shares of any class or series of shares, whether or not any or all of those shares have been issued; or
- (2) vary or delete any special rights or restrictions attached to the shares of any class or series of shares, whether or not any or all of those shares have been issued,

and alter its Articles and Notice of Articles accordingly.

9.3. Change of Name

The Company may by special resolution of the shareholders authorize an alteration to its Notice of Articles in order to change its name and may, by special resolution, adopt or change any translation of that name.

9.4. Other Alterations

If the *Business Corporations Act* does not specify the type of resolution and these Articles do not specify another type of resolution, the Company may by special resolution of the shareholders alter these Articles.

9.5. Consent to Alterations

Notwithstanding the other provisions of these Articles, the Company will not alter or amend the restriction in Articles 8, 9.4, 9.5, 9.6, 11.1, 13.1, 16.2, 18.1, 26.1, 26.5, 26.6, 27.1, and 27.2 in any way without the prior written consent of the Inspector of Municipalities.

9.6. Consent for Subsidiaries

The company will not create, organize or facilitate the incorporation of a subsidiary corporation of the Company without the prior written consent of the Inspector of Municipalities.

10. Meetings of Shareholders

10.1. Annual General Meetings

Unless an annual general meeting is deferred or waived in accordance with the *Business Corporations Act*, the Company must hold its first annual general meeting within 18 months after the date on which it was incorporated or otherwise recognized, and after that must hold an annual general meeting at least once in each calendar year and not more than 15 months after the last annual reference date at such time and place as may be determined by the directors.

10.2. Resolution Instead of Annual General Meeting

If all the shareholders who are entitled to vote at an annual general meeting consent by a unanimous resolution to all of the business that is required to be transacted at that annual general meeting, the annual general meeting is deemed to have been held on the date of the unanimous resolution. The shareholders must, in any unanimous resolution passed under this Article 10.2, select as the Company's annual reference date a date that would be appropriate for the holding of the applicable annual general meeting.

10.3. Calling of Meetings of Shareholders

The directors may, at any time, call a meeting of shareholders to be held at such time and place as may be determined by the directors.

10.4. Notice for Meetings of Shareholders

The Company must send notice of the date, time, and location of any meeting of shareholders (including, without limitation, any notice specifying the intention to propose a resolution as an exceptional

resolution, a special resolution or a special separate resolution and any notice to consider approving an amalgamation into a foreign jurisdiction, an arrangement or the adoption of an amalgamation agreement, and any notice of a general meeting, class meeting, or series meeting), in the manner provided in these Articles, or in such other manner, if any, as may be prescribed by special resolution (whether previous notice of the resolution has been given or not), to each shareholder entitled to attend the meeting, to each director, and to the auditor of the Company, unless these Articles otherwise provide, at least 10 days before the meeting.

10.5. Notice of Resolution to Which Shareholders May Dissent

The Company must send to each of its shareholders, whether or not their shares carry the right to vote, a notice of any meeting of shareholders at which a resolution entitling shareholders to dissent is to be considered specifying the date of the meeting and containing a statement advising of the right to send a notice of dissent together with a copy of the proposed resolution at least 10 days before the meeting.

10.6. Record Date for Notice

The directors may set a date as the record date for the purpose of determining shareholders entitled to notice of any meeting of shareholders. The record date must not precede the date on which the meeting is to be held by more than two months or, in the case of a general meeting requisitioned by shareholders under the *Business Corporations Act*, by more than four months. The record date must not precede the date on which the meeting is held by fewer than 10 days.

If no record date is set, the record date is 5:00 p.m. on the day immediately preceding the first date on which the notice is sent or, if no notice is sent, the beginning of the meeting.

10.7. Record Date for Voting

The directors may set a date as the record date for the purpose of determining shareholders entitled to vote at any meeting of shareholders. The record date must not precede the date on which the meeting is to be held by more than two months or, in the case of a general meeting requisitioned by shareholders under the *Business Corporations Act*, by more than four months. If no record date is set, the record date is 5:00 p.m. on the day immediately preceding the first date on which the notice is sent or, if no notice is sent, the beginning of the meeting.

10.8. Failure to Give Notice and Waiver of Notice

The accidental omission to send notice of any meeting of shareholders to, or the non-receipt of any notice by, any of the persons entitled to notice does not invalidate any proceedings at that meeting. Any person entitled to notice of a meeting of shareholders may, in writing or otherwise, waive that entitlement or agree to reduce the period of that notice. Attendance of a person at a meeting of shareholders is a waiver of entitlement to notice of the meeting unless that person attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.

10.9. Notice of Special Business at Meetings of Shareholders

If a meeting of shareholders is to consider special business within the meaning of Article 11.1, the notice of meeting must:

- (1) state the general nature of the special business; and

- (2) if the special business includes considering, approving, ratifying, adopting, or authorizing any document or the signing of or giving of effect to any document, have attached to it a copy of the document or state that a copy of the document will be available for inspection by shareholders:
 - (a) at the Company's records office, or at such other reasonably accessible location in British Columbia as is specified in the notice; and
 - (b) during statutory business hours on any one or more specified days before the day set for the holding of the meeting.

11. Proceedings at Meetings of Shareholders

11.1. Special Business

At a meeting of shareholders, the following business is special business:

- (1) at a meeting of shareholders that is not an annual general meeting, all business is special business except business relating to the conduct of or voting at the meeting;
- (2) at an annual general meeting, all business is special business except for the following:
 - (a) business relating to the conduct of or voting at the meeting;
 - (b) consideration of any financial statements of the Company presented to the meeting;
 - (c) consideration of any reports of the directors or auditor;
 - (d) the setting or changing of the number of directors;
 - (e) the election or appointment of directors;
 - (f) the appointment of an auditor;
 - (g) the setting of the remuneration of an auditor;
 - (h) business arising out of a report of the directors not requiring the passing of a special resolution or an exceptional resolution; and
 - (i) any other business which, under these Articles or the *Business Corporations Act*, may be transacted at a meeting of shareholders without prior notice of the business being given to the shareholders.

11.2. Special Majority

The majority of votes required for the Company to pass a special resolution at a general meeting of shareholders is two-thirds of the votes cast on the resolution.

11.3. Quorum

Subject to the special rights or restrictions attached to the shares of any class or series of shares, the quorum for the transaction of business at a meeting of shareholders is five shareholders.

11.4. Persons Entitled to Attend Meeting

In addition to those persons who are entitled to vote at a meeting of shareholders, the only other persons entitled to be present at the meeting are the directors, the president (if any), the secretary (if any), the assistant secretary (if any), any lawyer for the Company, the auditor of the Company, any persons invited to be present at the meeting by the directors or by the chair of the meeting, and any persons entitled or required under the *Business Corporations Act* or these Articles to be present at the meeting; but if any of those persons does attend the meeting, that person is not to be counted in the quorum and is not entitled to vote at the meeting unless that person is a shareholder or proxy holder entitled to vote at the meeting.

11.5. Requirement of Quorum

No business, other than the election of a chair of the meeting and the adjournment of the meeting, may be transacted at any meeting of shareholders unless a quorum of shareholders entitled to vote is present at the commencement of the meeting, but such quorum need not be present throughout the meeting.

11.6. Lack of Quorum

If, within one-half hour from the time set for the holding of a meeting of shareholders, a quorum is not present:

- (1) in the case of a general meeting requisitioned by shareholders, the meeting is dissolved; and
- (2) in the case of any other meeting of shareholders, the meeting stands adjourned to the same day in the next week at the same time and place.

11.7. Lack of Quorum at Succeeding Meeting

If, at the meeting to which the meeting referred to in Article 11.6(2) was adjourned, a quorum is not present within one-half hour from the time set for the holding of the meeting, the person or persons present and being, or representing by proxy, one or more shareholders entitled to attend and vote at the meeting, constitute a quorum.

11.8. Chair

The following individual is entitled to preside as chair at a meeting of shareholders:

- 1) the chair of the board; or
- 2) if the chair of the board is absent or unwilling to act as chair of the meeting, the vice chair of the board.

11.9. Selection of Alternate Chair

If, at any meeting of shareholders, there is no chair of the board or vice chair of the board present within 15 minutes after the time set for holding the meeting, or if the chair of the board and the vice chair of the board are unwilling to act as chair of the meeting, or if the chair of the board and vice chair of the board

have advised the secretary, if any, or any director present at the meeting, that they will not be present at the meeting, the directors present must choose one of their number to be chair of the meeting or if all of the directors present decline to take the chair or fail to so choose or if no director is present, the shareholders entitled to vote at the meeting who are present in person or by proxy may choose any person present at the meeting to chair the meeting.

11.10. Adjournments

The chair of a meeting of shareholders may, and if so directed by the meeting must, adjourn the meeting from time to time and from place to place, but no business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

11.11. Notice of Adjourned Meeting

It is not necessary to give any notice of an adjourned meeting of shareholders or of the business to be transacted at an adjourned meeting of shareholders except that, when a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of the original meeting.

11.12. Decisions by Show of Hands or Poll

Subject to the *Business Corporations Act*, every motion put to a vote at a meeting of shareholders will be decided on a show of hands unless a poll, before or on the declaration of the result of the vote by show of hands, is directed by the chair or demanded by any shareholder entitled to vote who is present in person or by proxy.

11.13. Declaration of Result

The chair of a meeting of shareholders must declare to the meeting the decision on every question in accordance with the result of the show of hands or the poll, as the case may be, and that decision must be entered in the minutes of the meeting. A declaration of the chair that a resolution is carried by the necessary majority or is defeated is, unless a poll is directed by the chair or demanded under Article 11.12, conclusive evidence without proof of the number or proportion of the votes recorded in favour of or against the resolution.

11.14. Motion Need Not be Seconded

No motion proposed at a meeting of shareholders need be seconded unless the chair of the meeting rules otherwise, and the chair of any meeting of shareholders is entitled to propose or second a motion.

11.15. Casting Vote

In the case of an equality of votes, the chair of a meeting of shareholders does not, either on a show of hands or on a poll, have a second or casting vote in addition to the vote or votes to which the chair may be entitled as a shareholder.

11.16. Manner of Taking Poll

Subject to Article 11.17, if a poll is duly demanded at a meeting of shareholders:

- 1) the poll must be taken:

- i) at the meeting, or within seven days after the date of the meeting, as the chair of the meeting directs; and
 - ii) in the manner, at the time and at the place that the chair of the meeting directs;
- 2) the result of the poll is deemed to be the decision of the meeting at which the poll is demanded; and
- 3) the demand for the poll may be withdrawn by the person who demanded it.

11.17. Demand for Poll on Adjournment

A poll demanded at a meeting of shareholders on a question of adjournment must be taken immediately at the meeting.

11.18. Chair Must Resolve Dispute

In the case of any dispute as to the admission or rejection of a vote given on a poll, the chair of the meeting must determine the dispute, and their determination made in good faith is final and conclusive.

11.19. Casting of Votes

On a poll, a shareholder entitled to more than one vote need not cast all the votes in the same way.

11.20. No Demand for Poll on Election of Chair

No poll may be demanded in respect of the vote by which a chair of a meeting of shareholders is elected.

11.21. Demand for Poll Not to Prevent Continuance of Meeting

The demand for a poll at a meeting of shareholders does not, unless the chair of the meeting so rules, prevent the continuation of the meeting for the transaction of any business other than the question on which a poll has been demanded.

11.22. Retention of Ballots and Proxies

The Company must, for at least three months after a meeting of shareholders, keep each ballot cast on a poll and each proxy voted at the meeting, and, during that period, make them available for inspection during normal business hours by any shareholder or proxyholder entitled to vote at the meeting. At the end of such three month period, the Company may destroy such ballots and proxies.

12. Votes of Shareholders

12.1. Number of Votes by Shareholder or by Shares

Subject to any special rights or restrictions attached to any shares:

- 1) on a vote by show of hands, every person present who is a shareholder or proxy holder and entitled to vote on the matter has one vote; and

on a poll, every shareholder entitled to vote on the matter has one vote in respect of each share entitled to be voted on the matter and held by that shareholder and may exercise that vote either in person or by proxy.

12.2. Votes of Persons in Representative Capacity

A person who is not a shareholder may vote at a meeting of shareholders, whether on a show of hands or on a poll, and may appoint a proxy holder to act at the meeting, if, before doing so, the person satisfies the chair of the meeting, or the directors, that the person is a legal personal representative or a trustee in bankruptcy for a shareholder who is entitled to vote at the meeting.

12.3. Representative of a Corporate Shareholder

- 1) If a corporation that is not a subsidiary of the Company is a shareholder, that corporation may appoint a person to act as its representative at any meeting of shareholders of the Company.
- 2) if a representative is appointed under this Article 12.3:
 - (a) the representative is entitled to exercise in respect of and at that meeting the same rights on behalf of the corporation that the representative represents as that corporation could exercise if it were a shareholder who is an individual, including, without limitation, the right to appoint a proxy holder; and
 - (b) the representative, if present at the meeting, is to be counted for the purpose of forming a quorum and is deemed to be a shareholder present in person at the meeting.

12.4. Appointment of Proxy Holders

Every shareholder of the Company, including a corporation that is a shareholder but not a subsidiary of the Company, entitled to vote at a meeting of shareholders may, by proxy, appoint one or more proxy holders to attend and act at the meeting in the manner, to the extent and with the powers conferred by the proxy.

12.5. Alternate Proxy Holders

A shareholder may appoint one or more alternate proxy holders to act in the place of an absent proxy holder.

12.6. Deposit of Proxy

A proxy for a meeting of shareholders must be received at the meeting or any adjourned meeting, by the chair of the meeting or adjourned meeting or by a person designated by the chair of the meeting or adjourned meeting.

12.7. Form of Proxy

A proxy, whether for a specified meeting or otherwise, must be either in the following form or in any other form approved by the directors or the chair of the meeting:

[name of company]
(the “Company”)

The undersigned, being a shareholder of the Company, hereby appoints *[name]* or, failing that person, *[name]*, as proxy holder for the undersigned to attend, act, and vote for and on behalf of the undersigned at the meeting of shareholders of the Company to be held on *[month, day, year]* and at any adjournment of that meeting.

Number of shares in respect of which this proxy is given (if no number is specified, then this proxy is given in respect of all shares registered in the name of the undersigned):

Signed *[month, day, year]*

[Signature of shareholder]

[Name of shareholder—printed]

12.8. Chair May Determine Validity of Proxy

The chair of any meeting of shareholders may determine whether or not a proxy deposited for use at the meeting, which may not strictly comply with the requirements of this Part 12 as to form, execution, accompanying documentation, time of filing, or otherwise, will be valid for use at the meeting, and any such determination made in good faith will be final, conclusive, and binding upon the meeting.

12.9. Production of Evidence of Authority to Vote

The chair of any meeting of shareholders may, but need not, inquire into the authority of any person to vote at the meeting and may, but need not, demand from that person production of evidence as to the existence of the authority to vote.

13. Directors

13.1. First Directors; Number of Directors

The first directors are the persons designated as directors of the Company in the Notice of Articles that applies to the Company when it is recognized under the *Business Corporations Act*. The board of directors is comprised of nine (9) voting Directors, in accordance with the following rules on composition:

- (a) the City of Nanaimo designates one (1) senior staff member to serve as a voting Director
- (b) each of the other shareholders designates one (1) individual to serve as a voting Director
- (c) the shareholders together select and appoint the remaining three (3) voting Directors, including one from the Social Services sector, from persons who apply to the Board through a public call for applicants

13.2. Change in Number of Directors

If there is a vacancy on the board of directors, the shareholder or shareholders responsible for filling such vacancy will be the shareholder or shareholders that originally appointed or elected the director that ceased to hold office and created the vacancy being filled.

13.3. Directors' Acts Valid Despite Vacancy

An act or proceeding of the directors is not invalid merely because fewer than the number of directors set or otherwise required under these Articles is in office.

13.4. Qualifications of Directors

A director is not required to hold a share of the Company as qualification for their office but must be qualified as required by the *Business Corporations Act* to become, act, or continue to act as a director.

13.5. Remuneration of Directors

The directors are not entitled to the remuneration for acting as a director and no director shall directly or indirectly receive any profit from a position as a director of the Company.

13.6. Reimbursement of Expenses of Directors

The Company must reimburse each director for the reasonable expenses that they may incur in and about the business of the Company.

13.7. Special Remuneration for Directors

If any director performs any professional or other services for the Company that in the opinion of the directors are outside the ordinary duties of a director, or if any director is otherwise specially occupied in or about the Company's business, they may be paid remuneration fixed by the directors, or, at the option of that director, fixed by special resolution, and such remuneration may be either in addition to, or in substitution for, any other remuneration that they may be entitled to receive.

14. Election and Removal of Directors

14.1. Appointment and Election of Directors

The shareholders will elect or appoint directors at the intervals and for the term determined by the shareholders. Notwithstanding the foregoing, if at an annual general meeting there exists a vacancy among the directors, the shareholders entitled to vote at the annual general meeting for the election of directors must elect a director or directors to fill such vacancy.

14.2. Consent to be a Director

No election, appointment, or designation of an individual as a director is valid unless:

- 1) that individual consents to be a director in the manner provided for in the *Business Corporations Act*;
- 2) that individual is elected or appointed at a meeting at which the individual is present and the individual does not refuse, at the meeting, to be a director; or

- 3) with respect to first directors, the designation is otherwise valid under the *Business Corporations Act*.

14.3. Failure to Elect or Appoint Directors

If:

- 1) the Company fails to hold an annual general meeting, and all the shareholders who are entitled to vote at an annual general meeting fail to pass the unanimous resolution contemplated by Article 10.2, on or before the date by which the annual general meeting is required to be held under the *Business Corporations Act*; or
- 2) the shareholders fail, at the annual general meeting or in the unanimous resolution contemplated by Article 10.2, to elect or appoint any directors,

then each director then in office continues to hold office until the earlier of:

- 3) when their respective successor is elected or appointed; and
- 4) when they otherwise cease to hold office under the *Business Corporations Act* or these Articles.

14.4. Places of Retiring Directors Not Filled

If, at any meeting of shareholders at which there should be an election of directors, the places of any of the retiring directors are not filled by that election, those retiring directors who are not re-elected and who are asked by the newly elected directors to continue in office will, if willing to do so, continue in office to complete the number of directors for the time being set pursuant to these Articles until further new directors are elected at a meeting of shareholders convened for that purpose. If any such election or continuance of directors does not result in the election or continuance of the number of directors for the time being set pursuant to these Articles, the number of directors of the Company is deemed to be set at the number of directors actually elected or continued in office.

14.5. Casual Vacancies

If there is a vacancy on the board of directors, the shareholders may, via resolution, elect or appoint directors to fill such vacancy.

14.6. Remaining Directors' Power to Act

The directors may act notwithstanding any vacancy in the board of directors, but if the Company has fewer directors in office than the number set pursuant to these Articles as the quorum of directors, the directors may only act for the purpose of appointing directors up to that number or of calling a meeting of shareholders for the purpose of filling any vacancies on the board of directors or, subject to the *Business Corporations Act*, for any other purpose.

14.7. Shareholders May Fill Vacancies

If the Company has no directors or fewer directors in office than the number set pursuant to these Articles as the quorum of directors, the shareholders may, via resolution, elect or appoint directors to fill any vacancies on the board of directors.

14.8. Additional Directors

The directors may not appoint additional directors.

14.9. Ceasing to be a Director

A director ceases to be a director when:

- 1) the term of office of the director expires;
- 2) the director dies;
- 3) the director resigns as a director by notice in writing provided to the Company or a lawyer for the Company; or
- 4) the director is removed from office pursuant to Articles 14.10 or 14.11.

14.10. Removal of Director by Shareholders

The Company may remove any director before the expiration of their term of office by special resolution. In that event, the shareholders may elect, or appoint by special resolution, a director to fill the resulting vacancy. If the shareholders do not elect or appoint a director to fill the resulting vacancy contemporaneously with the removal, then the directors may appoint or the shareholders may elect, or appoint by special resolution, a director to fill that vacancy.

14.11. Removal of Director by Directors

The directors may remove any director before the expiration of such director's term of office if the director is convicted of an indictable offence, or if the director ceases to be qualified to act as a director of a company and does not promptly resign, and the resulting vacancy will be treated as a casual vacancy and filled accordingly.

14.12. Term of Directors Appointed to Fill Vacancy

If the shareholders appoint a director to fill a vacancy on the board, the term of such replacement director will be the same as the term of the director that created such vacancy being filled.

15. Alternate Directors

15.1. Appointment of Alternate Director

Any director (an "appointor") may by notice in writing received by the Company appoint any person (an "appointee") who is qualified to act as a director to be their alternate to act in their place at meetings of the directors or committees of the directors at which the appointor is not present unless (in the case of an appointee who is not a director) the directors have reasonably disapproved the appointment of such

person as an alternate director and have given notice to that effect to their appointor within a reasonable time after the notice of appointment is received by the Company.

15.2. Notice of Meetings

Every alternate director so appointed is entitled to notice of meetings of the directors and of committees of the directors of which the alternate director's appointor is a member and to attend and vote as a director at any such meetings at which their appointor is not present.

15.3. Alternate for More Than One Director Attending Meetings

A person may be appointed as an alternate director by more than one director, and an alternate director:

- 1) will be counted in determining the quorum for a meeting of directors once for each of the appointee's appointors and, in the case of an appointee who is also a director, once more in that capacity;
- 2) has a separate vote at a meeting of directors for each of the appointee's appointors and, in the case of an appointee who is also a director, an additional vote in that capacity;
- 3) will be counted in determining the quorum for a meeting of a committee of directors once for each of the appointee's appointors who is a member of that committee and, in the case of an appointee who is also a member of that committee as a director, once more in that capacity; and
- 4) has a separate vote at a meeting of a committee of directors for each of the appointee's appointors who is a member of that committee and, in the case of an appointee who is also a member of that committee as a director, an additional vote in that capacity.

15.4. Consent Resolutions

Every alternate director, if authorized by the notice appointing them, may sign in place of their appointor any resolutions to be consented to in writing.

15.5. Alternate Director Not an Agent

Every alternate director is deemed not to be the agent of their appointor.

15.6. Revocation of Appointment of Alternate Director

An appointor may at any time, by notice in writing received by the Company, revoke the appointment of an alternate director appointed by them.

15.7. Ceasing to be an Alternate Director

The appointment of an alternate director ceases when:

- 1) their appointor ceases to be a director and is not promptly re-elected or re-appointed;
- 2) the alternate director dies;

- 3) the alternate director resigns as an alternate director by notice in writing provided to the Company or a lawyer for the Company;
- 4) the alternate director ceases to be qualified to act as a director; or
- 5) their appointor revokes the appointment of the alternate director.

15.8. Remuneration and Expenses of Alternate Director

The Company may reimburse an alternate director for the reasonable expenses that would be properly reimbursed if they were a director, and the alternate director is entitled to receive from the Company such proportion, if any, of the remuneration otherwise payable to the appointor as the appointor may from time to time direct.

16. Powers and Duties of Directors

16.1. Powers of Management

The directors must, subject to the *Business Corporations Act* and these Articles, manage or supervise the management of the business and affairs of the Company and have the authority to exercise all such powers of the Company as are not, by the *Business Corporations Act* or by these Articles, required to be exercised by the shareholders of the Company.

16.2. Fiscal Year End and Audited Financial Statements

The Directors shall set December 31 in each year as the Fiscal Year End of the Company and the Directors shall make Audited Financial Statements available to the Shareholders of the Company within 90 days of the Company's Fiscal Year End in each year.

16.3. Appointment of Attorney of Company

The directors may from time to time, by power of attorney or other instrument, under seal if so required by law, appoint any person to be the attorney of the Company for such purposes, and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the directors under these Articles and excepting the power to fill vacancies in the board of directors, to remove a director, to change the membership of, or fill vacancies in, any committee of the directors, to appoint or remove officers appointed by the directors, and to declare dividends) and for such period, and with such remuneration and subject to such conditions as the directors may think fit. Any such power of attorney may contain such provisions for the protection or convenience of persons dealing with such attorney as the directors think fit. Any such attorney may be authorized by the directors to sub-delegate all or any of the powers, authorities, and discretions for the time being vested in such attorney.

17. Interests of Directors and Officers

17.1. Obligation to Account for Profits

A director or senior officer who holds a disclosable interest (as that term is used in the *Business Corporations Act*) in a contract or transaction into which the Company has entered or proposes to enter is liable to account to the Company for any profit that accrues to the director or senior officer under or as a result of the contract or transaction only if and to the extent provided in the *Business Corporations Act*.

17.2. Restrictions on Voting by Reason of Interest

A director who holds a disclosable interest in a contract or transaction into which the Company has entered or proposes to enter is not entitled to vote on any directors' resolution to approve that contract or transaction, unless all the directors have a disclosable interest in that contract or transaction, in which case any or all of those directors may vote on such resolution.

17.3. Interested Director Counted in Quorum

A director who holds a disclosable interest in a contract or transaction into which the Company has entered or proposes to enter and who is present at the meeting of directors at which the contract or transaction is considered for approval may be counted in the quorum at the meeting whether or not the director votes on any or all of the resolutions considered at the meeting.

17.4. Disclosure of Conflict of Interest or Property

A director or senior officer who holds any office or possesses any property, right, or interest that could result, directly or indirectly, in the creation of a duty or interest that materially conflicts with that individual's duty or interest as a director or senior officer, must disclose the nature and extent of the conflict as required by the *Business Corporations Act*.

17.5. Director Holding Other Office in the Company

A director may hold any office or place of profit with the Company, other than the office of auditor of the Company, in addition to their office of director for the period and on the terms (as to remuneration or otherwise) that the directors may determine.

17.6. No Disqualification

No director or intended director is disqualified by their office from contracting with the Company either with regard to the holding of any office or place of profit the director holds with the Company or as vendor, purchaser, or otherwise, and no contract or transaction entered into by or on behalf of the Company in which a director is in any way interested is liable to be voided for that reason.

17.7. Professional Services by Director or Officer

Subject to the *Business Corporations Act*, a director or officer, or any person in which a director or officer has an interest, may act in a professional capacity for the Company, except as auditor of the Company, and the director or officer or such person is entitled to remuneration for professional services as if that director or officer were not a director or officer.

17.8. Director or Officer in Other Corporations

A director or officer may be or become a director, officer, or employee of, or otherwise interested in, any person in which the Company may be interested as a shareholder or otherwise, and, subject to the *Business Corporations Act*, the director or officer is not accountable to the Company for any remuneration or other benefits received by them as director, officer, or employee of, or from their interest in, such other person.

18. Proceedings of Directors

18.1. Meetings of Directors

The directors may meet together for the conduct of business, and adjourn and otherwise regulate their meetings as they think fit, and meetings of the directors held at regular intervals may be held at the place, at the time, and on the notice, if any, as the directors may from time to time determine.

18.2. Voting at Meetings

Questions arising at any meeting of directors are to be decided by a majority of votes and, in the case of an equality of votes, the chair of the meeting does not have a second or casting vote.

18.2A Election and Duties of Chair

- 1) At the first meeting of the board in a calendar year, the directors will elect a chair and vice-chair of the board, with the vice-chair acting in place of the chair when the chair is unavailable.
- 2) Duties of the chair will include:
 - i) presiding at meetings of the board;
 - ii) providing general direction to the chief executive officer of the Company;
 - iii) acting as the board's liaison with the Company's shareholder's, media, and other external entities;
 - iv) executing any instrument, document, or agreement in the name of and on behalf of the Company; and
 - v) carrying out all other duties and functions assigned by the directors.

18.3. Chair of Meetings

The following individual is entitled to preside as chair at a meeting of directors:

- 1) the chair of the board;
- 2) the vice-chair of the board;
- 3) in the absence of the chair or vice-chair of the board, the president, if any, if the president is a director; or
- 4) any other director chosen by the directors if:
 - i) neither the chair of the board nor the president, if a director, is present at the meeting within 15 minutes after the time set for holding the meeting;
 - ii) neither the chair of the board nor the president, if a director, is willing to chair the meeting; or

- iii) the chair of the board and the president, if a director, have advised the secretary, if any, or any other director, that they will not be present at the meeting.

18.4. Meetings by Telephone or Other Communications Medium

A director may participate in a meeting of the directors or of any committee of the directors:

- 1) in person;
- 2) by telephone; or
- 3) with the consent of all directors who wish to participate in the meeting, by other communications medium,

if all directors participating in the meeting, whether in person or by telephone or other communications medium, are able to communicate with each other. A director who participates in a meeting in a manner contemplated by this Article 18.4 is deemed for all purposes of the *Business Corporations Act* and these Articles to be present at the meeting and to have agreed to participate in that manner.

18.5. Calling of Meetings

A director may, and the secretary or an assistant secretary of the Company, if any, on the request of a director must, call a meeting of the directors at any time.

18.6. Notice of Meetings

Other than for meetings held at regular intervals as determined by the directors pursuant to Article 18.1 or as provided in Article 18.7, reasonable notice of each meeting of the directors, specifying the place, day, and time of that meeting, must be given to each of the directors and the alternate directors by any method set out in Article 23.1 or orally or by telephone.

18.7. When Notice Not Required

It is not necessary to give notice of a meeting of the directors to a director or an alternate director if:

- 1) the meeting is to be held immediately following a meeting of shareholders at which that director was elected or appointed, or is the meeting of the directors at which that director is appointed; or
- 2) the director or alternate director, as the case may be, has waived notice of the meeting.

18.8. Meeting Valid Despite Failure to Give Notice

The accidental omission to give notice of any meeting of directors to, or the non-receipt of any notice by, any director or alternate director, does not invalidate any proceedings at that meeting.

18.9. Waiver of Notice of Meetings

Any director or alternate director may send to the Company a document signed by them waiving notice of any past, present, or future meeting or meetings of the directors and may at any time withdraw that

waiver with respect to meetings held after that withdrawal. After sending a waiver with respect to all future meetings and until that waiver is withdrawn, no notice of any meeting of the directors need be given to that director or, unless the director otherwise requires by notice in writing to the Company, to their alternate director, and all meetings of the directors so held are deemed not to be improperly called or constituted by reason of notice not having been given to such director or alternate director. Attendance of a director or alternate director at a meeting of the directors is a waiver of notice of the meeting unless that director or alternate director attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.

18.10. Quorum

The quorum necessary for the transaction of the business of the directors is five voting directors.

18.11. Validity of Acts Where Appointment Defective

Subject to the *Business Corporations Act*, an act of a director or officer is not invalid merely because of an irregularity in the election or appointment or a defect in the qualification of that director or officer.

18.12. Consent Resolutions in Writing

A resolution of the directors or of any committee of the directors may be passed without a meeting:

- 1) in all cases, if each of the directors entitled to vote on the resolution consents to it in writing; or
- 2) in the case of a resolution to approve a contract or transaction in respect of which a director has disclosed that they have or may have a disclosable interest, if each of the other directors who have not made such a disclosure consents in writing to the resolution.

A consent in writing under this Article 18.12 may be by any written instrument, fax, email, or any other method of transmitting legibly recorded messages in which the consent of the director is evidenced, whether or not the signature of the director is included in the record. A consent in writing may be in two or more counterparts which together are deemed to constitute one consent in writing. A resolution of the directors or of any committee of the directors passed in accordance with this Article 18.12 is effective on the date stated in the consent in writing or on the latest date stated on any counterpart and is deemed to be a proceeding at a meeting of the directors or of the committee of the directors and to be as valid and effective as if it had been passed at a meeting of the directors or of the committee of the directors that satisfies all the requirements of the *Business Corporations Act* and all the requirements of these Articles relating to meetings of the directors or of a committee of the directors.

19. Executive and Other Committees

19.1. Appointment and Powers of Executive Committee

The directors may, by resolution, appoint an executive committee consisting of the director or directors that they consider appropriate, and during the intervals between meetings of the board of directors all of the directors' powers are delegated to the executive committee, except:

- 1) the power to fill vacancies in the board of directors;
- 2) the power to remove a director;

- 3) the power to change the membership of, or fill vacancies in, any committee of the directors; and
such other powers, if any, as may be set out in the resolution or any subsequent directors' resolution.

19.2. Appointment and Powers of Other Committees

The directors may, by resolution:

- 1) appoint one or more committees (other than the executive committee) consisting of the director or directors that they consider appropriate, as well as a chair and vice-chair for each committee;
- 2) delegate to a committee appointed under paragraph (1) any of the directors' powers, except:
 - i) the power to remove a director;
 - ii) the power to change the membership of, or fill vacancies in, any committee of the directors; and
 - iii) the power to appoint or remove officers appointed by the directors; and
- 3) make any delegation referred to in paragraph (2) subject to the conditions set out in the resolution or any subsequent directors' resolution.

19.3. Obligations of Committees

Any committee appointed under Articles 19.1 or 19.2, in the exercise of the powers delegated to it, must:

- 1) conform to any rules that may from time to time be imposed on it by the directors; and
- 2) report every act or thing done in exercise of those powers at such times as the directors may require.

19.4. Powers of Board

The directors may, at any time, with respect to a committee appointed under Articles 19.1 or 19.2:

- 1) revoke or alter the authority given to the committee, or override a decision made by the committee, except as to acts done before such revocation, alteration or overriding;
- 2) terminate the appointment of, or change the membership of, the committee; and
- 3) fill vacancies in the committee.

19.5. Committee Meetings

Subject to Article 19.3(1) and unless the directors otherwise provide in the resolution appointing the committee or in any subsequent resolution, with respect to a committee appointed under Articles 19.1 or 19.2:

- 1) the committee may meet and adjourn as it thinks proper;
- 2) the committee may elect a chair of its meetings but, if no chair of a meeting is elected, or if at a meeting the chair of the meeting is not present within 15 minutes after the time set for holding the meeting, the directors present who are members of the committee may choose one of their number to chair the meeting;
- 3) a majority of the members of the committee constitutes a quorum of the committee; and
- 4) questions arising at any meeting of the committee are determined by a majority of votes of the members present, and in the case of an equality of votes, the chair of the meeting does not have a second or casting vote.

20. Officers

20.1. Directors May Appoint Officers

The directors may, from time to time, appoint such officers, if any, as the directors determine and the directors may, at any time, terminate any such appointment.

20.2. Functions, Duties, and Powers of Officers

The directors may, for each officer:

- 1) determine the functions and duties of the officer;
- 2) delegate to the officer any of the powers exercisable by the directors on such terms and conditions and with such restrictions as the directors think fit; and
- 3) revoke, withdraw, alter, or vary all or any of the functions, duties, and powers of the officer.

20.3. Qualifications

No officer may be appointed unless that officer is qualified in accordance with the *Business Corporations Act*. One person may hold more than one position as an officer of the Company. Any person appointed as the chair of the board or as a managing director must be a director. Any other officer need not be a director.

20.4. Remuneration and Terms of Appointment

All appointments of officers are to be made on the terms and conditions and at the remuneration (whether by way of salary, fee, commission, participation in profits or otherwise) that the directors think fit and are subject to termination at the pleasure of the directors, and an officer may in addition to such remuneration be entitled to receive, after they cease to hold such office or leaves the employment of the Company, a pension or gratuity.

21. Indemnification

21.1. Definitions

In this Article 21:

- 1) **“eligible penalty”** means a judgment, penalty, or fine awarded or imposed in, or an amount paid in settlement of, an eligible proceeding;
- 2) **“eligible proceeding”** means a legal proceeding or investigative action, whether current, threatened, pending, or completed, in which a director, former director, or alternate director of the Company (an **“eligible party”**) or any of the heirs and legal personal representatives of the eligible party, by reason of the eligible party being or having been a director or alternate director of the Company:
 - i) is or may be joined as a party; or
 - ii) is or may be liable for or in respect of a judgment, penalty, or fine in, or expenses related to, the proceeding; and
- 3) **“expenses”** has the meaning set out in the *Business Corporations Act*.

21.2. Mandatory Indemnification of Directors

Subject to the *Business Corporations Act*, the Company must indemnify a director, former director, or alternate director of the Company and their heirs and legal personal representatives against all eligible penalties to which such person is or may be liable, and the Company must, after the final disposition of an eligible proceeding, pay the expenses actually and reasonably incurred by such person in respect of that proceeding. Each director and alternate director is deemed to have contracted with the Company on the terms of the indemnity contained in this Article 21.2.

21.3. Permitted Indemnification

Subject to any restrictions in the *Business Corporations Act*, the Company may indemnify any person.

21.4. Non-Compliance with Business Corporations Act

The failure of a director, alternate director, or officer of the Company to comply with the *Business Corporations Act* or these Articles or, if applicable, any former Companies Act or former Articles, does not invalidate any indemnity to which such person is entitled under this Part 21.

21.5. Company May Purchase Insurance

The Company may purchase and maintain insurance for the benefit of any person (or their heirs or legal personal representatives) who:

- 1) is or was a director, alternate director, officer, employee, or agent of the Company;

- 2) is or was a director, alternate director, officer, employee, or agent of a corporation at a time when the corporation is or was an affiliate of the Company;
- 3) at the request of the Company, is or was a director, alternate director, officer, employee, or agent of a corporation or of a partnership, trust, joint venture, or other unincorporated entity;
- 4) at the request of the Company, holds or held a position equivalent to that of a director, alternate director, or officer of a partnership, trust, joint venture, or other unincorporated entity,

against any liability incurred by such person as such director, alternate director, officer, employee, or agent or person who holds or held such equivalent position.

22. Accounting Records and Auditor

22.1. Recording of Financial Affairs

The directors must cause adequate accounting records to be kept to record properly the financial affairs and condition of the Company and to comply with the *Business Corporations Act*.

22.2. Inspection of Accounting Records

Unless the directors determine otherwise, or unless otherwise determined by special resolution, no shareholder of the Company is entitled to inspect or obtain a copy of any accounting records of the Company.

22.3. Remuneration of Auditor

The directors may set the remuneration of the auditor of the Company.

23. Notices

23.1. Method of Giving Notice

Unless the *Business Corporations Act* or these Articles provide otherwise, a notice, statement, report, or other record required or permitted by the *Business Corporations Act* or these Articles to be sent by or to a person may be sent by any one of the following methods:

- 1) mail addressed to the person at the applicable address for that person as follows:
 - i) for a record mailed to a shareholder, the shareholder's registered address;
 - ii) for a record mailed to a director or officer, the prescribed address for mailing shown for the director or officer in the records kept by the Company or the mailing address provided by the recipient for the sending of that record or records of that class; and
 - iii) in any other case, the mailing address of the intended recipient;
- 2) delivery at the applicable address for that person as follows, addressed to the person:
 - i) for a record delivered to a shareholder, the shareholder's registered address;

- ii) for a record delivered to a director or officer, the prescribed address for delivery shown for the director or officer in the records kept by the Company or the delivery address provided by the recipient for the sending of that record or records of that class; and
 - iii) in any other case, the delivery address of the intended recipient;
- 3) unless the intended recipient is the auditor of the Company, sending the record by fax to the fax number provided by the intended recipient for the sending of that record or records of that class;
 - 4) unless the intended recipient is the auditor of the Company, sending the record by email to the email address provided by the intended recipient for the sending of that record or records of that class; or
 - 5) physical delivery to the intended recipient.

23.2. Deemed Receipt

A notice, statement, report, or other record that is:

- 1) mailed to a person by ordinary mail to the applicable address for that person referred to in Article 23.1 is deemed to be received by the person to whom it was mailed on the day (Saturdays, Sundays, and holidays excepted) following the date of mailing;
- 2) faxed to a person to the fax number provided by that person referred to in Article 23.1 is deemed to be received by the person to whom it was faxed on the day it was faxed; and
- 3) emailed to a person to the email address provided by that person referred to in Article 23.1 is deemed to be received by the person to whom it was emailed on the day it was emailed.

23.3. Certificate of Sending

A certificate signed by the secretary, if any, or other officer of the Company or of any other corporation acting in that capacity on behalf of the Company stating that a notice, statement, report, or other record was sent in accordance with Article 23.1 is conclusive evidence of that fact.

23.4. Notice to Legal Personal Representatives and Trustees

A notice, statement, report, or other record may be provided by the Company to the persons entitled to a share or shares in consequence of the death, bankruptcy, or incapacity of a shareholder by:

- 1) mailing the record, addressed to them:
 - i) by name, by the title of the legal personal representative of the deceased or incapacitated shareholder, by the title of trustee of the bankrupt shareholder, or by any similar description; and
 - ii) at the address, if any, supplied to the Company for that purpose by the persons claiming to be so entitled; or

if an address referred to in paragraph (1)(b) has not been supplied to the Company, by giving the notice in a manner in which it might have been given if the death, bankruptcy or incapacity had not occurred.

23.5. Undelivered Notices

If on two consecutive occasions, a notice, statement, report, or other record is sent to a shareholder pursuant to Article 23.1 and on each of those occasions any such record is returned because the shareholder cannot be located, the Company will not be required to send any further records to the shareholder until the shareholder informs the Company in writing of their new address.

24. Execution of Documents Generally

The chair or vice-chair of the board is responsible for executing any instrument, document, or agreement in the name of and on behalf of the Company. If the chair and vice-chair are for any reason unable or unwilling to perform such execution, the directors may appoint any one or more persons, officers, or directors for the purpose of executing any instrument, document, or agreement in the name of and on behalf of the Company and if no such person, officer, or director is appointed, then any one officer or director of the Company may execute such instrument, document, or agreement.

25. Prohibitions

25.1. Definitions

In this part:

- 1) “security” has the meaning assigned in the *Securities Act* (British Columbia);
- 2) “transfer restricted security” means:
 - i) a share of the Company;
 - ii) a security of the Company convertible into shares of the Company; or
 - iii) any other security of the Company which must be subject to restrictions on transfer in order for the Company to satisfy the requirement for restrictions on transfer under the “private issuer” exemption of Canadian securities legislation or under any other exemption from prospectus or registration requirements of Canadian securities legislation similar in scope and purpose to the “private issuer” exemption.

25.2. Application

Article 25.3 does not apply to the Company if and for so long as it is a public company or a pre-existing reporting company which has the Statutory Reporting Company Provisions as part of these Articles or to which the Statutory Reporting Company Provisions apply.

26. Miscellaneous

26.1. Freedom of Information

Whether or not the *Freedom of Information and Protection of Privacy Act* applies to the Company, for so long as the City of Nanaimo is a shareholder of the Company the Directors will cause the Company to make Company documents available to the public where the Act would require that they be disclosed if it did apply to the Company. These documents must be available for inspection at the local government office.

26.2. Directors Powers Limited

Despite any other provisions of these Articles, pursuant to section 137 of the *Business Corporations Act*, the following powers of the directors of the Company to manage or supervise the management of the business and affairs of the Company, whether such powers arise from the *Business Corporations Act*, the notice of articles of the Company, these Articles or otherwise, are transferred to the shareholders of the Company:

- 1) the incurrence, whether absolutely or contingently, of indebtedness for borrowed money whether directly or by capital or financing lease or other indirect financing arrangements;
- 2) the authorization, creation, issuance or transfer of shares in the Company;
- 3) any change to the business or mandate of the Company;
- 4) the composition and authority of, and method of appointment to, the Agency's Board of Directors; and
- 5) the funding model of the Company, including changes to cost-sharing arrangements between shareholders.

26.3. Non-voting Director

A director elected or appointed as a non-voting director may not cast a vote in a vote of the directors.

26.4. Snuneymuxw First Nation

The Snuneymuxw First Nation (the "Snuneymuxw") is a shareholder of the Company and its agreement to be bound by terms of the Articles of Incorporation and the participation of its nominees participation on board shall not be interpreted in a manner that extinguishes, abrogates or diminishes the rights of Snuneymuxw, including Aboriginal or treaty rights or title which are protected under section 35 of the Constitution Act, 1982 and the Snuneymuxw Treaty 1854. For greater certainty nothing in these Articles and Snuneymuxw's interest in the Company constitutes consultation with or consent of Snuneymuxw for the purpose of discharging the Crown's honour and fiduciary in relation to developments that impact upon Snuneymuxw's indigenous interests.

26.5. Disposal of Local Government Assets

Where a shareholder who is a local government transfers property of the local government to the Company for less than market value consideration, the Company will not dispose of such property without the prior written approval of the applicable shareholder.

26.6. Annual Information Meeting

The Company will hold an annual information meeting open to the public at least once each calendar year as such time and place may be determined by the Directors in order to update the public as to the activities and business of the Company.

27. Business Restrictions

27.1. Business Restrictions

The Company is the economic development corporation through which business, government, First Nation, and community partners collaborate to build Nanaimo's economy, and increase the level of shared prosperity enjoyed by those who live here and has the following responsibilities:

- 1) to implement, maintain, and update as required the Nanaimo Economic Development Strategy
- 2) to develop and directly undertake initiatives aimed at attracting businesses, employers, talent and investment to the community
- 3) to coordinate the sector-specific and other economic development activities undertaken by a range of stakeholder organizations
- 4) to develop and directly undertake initiatives aimed at retaining and expanding existing businesses

27.2. Municipal Security and Guarantees

The Directors will not authorize the Company to borrow money on security provided by any local government shareholder, or the repayment of which is guaranteed by a local government shareholder, except where the local government provides such security or guarantee in a manner permitted by law.

The corporation must limit investments of money that is not immediately required for the purposes of the corporation to investments that local governments may make.

ATTACHMENT B
SHAREHOLDERS AGREEMENT

THIS AGREEMENT dated for reference the ___ day of _____, 2021 is

BETWEEN:

CITY OF NANAIMO
455 Wallace Street
Nanaimo, BC V9R 5J6

AND:

SNUNEYMUXW FIRST NATION
668 Centre Street
Nanaimo, BC V9R 4Z4

AND:

NANAIMO PORT AUTHORITY
Box 131
Nanaimo, BC V9R 5K4

AND:

NANAIMO AIRPORT COMMISSION
3238 Mustang Road
Cassidy, BC V0R 1H0

AND:

NANAIMO CHAMBER OF COMMERCE
2133 Bowen Road
Nanaimo, BC V9S 1H8

AND:

VANCOUVER ISLAND UNIVERSITY
900 Fifth Street
Nanaimo, BC V9R 5S5

DRAFT

WHEREAS:

- A. The Company was incorporated under the Act , 2022;
- B. The City of Nanaimo owns one Class A Equity Share;
- C. Nanaimo Chamber of Commerce, Nanaimo Airport Commission, Nanaimo Port Authority and Snuneymuxw First Nation each own one Class B Equity Share;
- D. Vancouver Island University owns one Class C Equity Share;
- E. The Shareholders wish for the Company to conduct the Business of the Company;
- F. The Shareholders are the registered and beneficial owners of all of the issued and outstanding shares in the capital of the Company, as set out below:
- G. The Shareholders wish to enter into this Agreement to provide for the management of the Company and to regulate dealings with their investments in it;

NOW THEREFORE for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1 - INTERPRETATION

- 1.1 Definitions.** In this Agreement, the following terms have the meaning set out below unless the context requires otherwise:
- (a) **“Act”** means the *Business Corporations Act* (British Columbia) as it may be amended or replaced from time to time;
 - (b) **“Agreement”** means this agreement, including the schedule to this agreement;
 - (c) **“Annual General Meeting Intervals”** means the time period between the date the Company holds an annual general meeting until the date the Company holds its next annual general meeting.
 - (d) **“Articles”** means the articles of the Company, as amended from time to time in accordance with the provisions of this Agreement and the Act;
 - (e) **“Auditor”** means the auditor of the Company, as appointed from time to time;
 - (f) **“Bank”** means the chartered bank or trust company where the Company maintains its accounts, as determined from time to time in accordance with the provisions of this Agreement;

- (g) **“Board”** means the board of Directors of the Company, as may be appointed from time to time in accordance with the provisions of this Agreement;
- (h) **“Business Day”** means a day other than a Saturday, Sunday or statutory holiday in B.C.
- (i) **“Business of the Company”** means the business of:
- (a) implementing, maintaining, and updating, as required, the Economic Development Strategy;
 - (b) developing and directly undertaking initiatives aimed at attracting businesses, employers, talent, and investment to the community of Nanaimo;
 - (c) coordinating the sector-specific and other economic development activities undertaken by a range of stakeholder organizations; and
 - (d) developing and undertaking initiatives aimed at retaining and expanding existing businesses in the City of Nanaimo.
- (j) **“Class A Shareholder”** means an owner of a Class A Equity Share.
- (k) **“Class B Shareholder”** means an owner of a Class B Equity Share.
- (l) **“Class C Shareholder”** means an owner of a Class C Equity Share.
- (m) **“Default”** has the meaning given in section 7.1;
- (n) **“Defaulting Shareholder”** has the meaning given in section 7.1;
- (o) **“Director”** means a person occupying the position of Director of the Company, and **“Directors”** means every Director;
- (p) **“Economic Development Strategy”** means the current economic development strategy published by the Nanaimo Economic Development section and published on the City of Nanaimo’s website;
- (q) **“Equity Shares”** means the common shares in the capital of the Company, and any other shares in the capital of the Company;
- (r) **“Financial Statements and Report”** has the meaning given in section 4.3(b);
- (s) **“GAAP”** means accounting standards set by the Account Standards Board to prepare financial statements in accordance with Canadian general accepted accounting principles (GAAP), including accounting standards for not-for-profit organizations;

- (t) **“In Kind Contribution”** means a value added contribution provided to the Corporation by a Class B Shareholder without repayment. This includes (but is not limited to) office space rental, equipment leasing, furnishings, shared operating and maintenance costs, shared staffing, advertising, food or meals, preparation of studies and reports, travel expenses, use of meeting spaces and student or volunteer hours. Specific In Kind Contributions are provided at the discretion of the Class B Shareholder to the Corporation. The value of the In Kind Contribution is calculated by the Class B Shareholder and provided to the Corporation as part of the annual reporting process.
- (u) **“Interest”** of a particular Shareholder means, collectively, all of the right, title and interest of the Shareholder in and to any Equity Shares;
- (v) **“Memorandum”** means the memorandum of the Company as amended from time to time in accordance with the provisions of this Agreement and the Act;
- (w) **“Non-Defaulting Shareholder”** has the meaning given in section 7.1;
- (x) **“Obligations”** of a Shareholder means all of its covenants, agreements, obligations, representations and warranties under or imposed by or provided in this Agreement and in any other agreement related hereto or to the Company in its capacity as Shareholder (but not in its capacity as employee);
- (y) **“Party”** means a party to this Agreement and its successors and permitted assigns, and **“Parties”** means every Party;
- (z) **“Person”** includes an individual, a corporation, a partnership, a trust, an unincorporated organization, the government of a country or any political subdivision thereof, or any agency or department of any such government, and the executors, administrators and other legal representatives of an individual in such capacity;
- (aa) **“Shareholder”** means each owner of an Equity Share;

1.2 Interpretation.

- (a) The division of this Agreement into articles and sections, the insertion of headings, and the provision of any table of contents are for the convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- (b) Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders.
- (c) Reference in this Agreement to any statute or any section thereof shall, unless otherwise expressly stated, be deemed to be a reference to such statute or section as amended, restated, or re-enacted from time to time.

- (d) Unless the context requires otherwise, reference in this Agreement to articles, sections or schedules are to articles, sections or schedules of this Agreement.
 - (e) Unless the context requires otherwise, reference in this Agreement to a day, month or year is a reference to a calendar day, month or year.
- 1.3 Business Days** – If any payment is required to be made or other action is required to be taken pursuant to this Agreement on a day which is not a Business Day, then such payment or action shall be made or taken on the next Business Day.
- 1.4 Currency and Payment Obligations** – Except as otherwise expressly provided in this Agreement, all dollar amounts referred to in this Agreement are stated in Canadian dollars and any payment contemplated by this Agreement shall be made by cash, certified cheque or any other method that provides immediately available funds.
- 1.5 Calculation of Interest** – In calculating interest payable under this Agreement for any period of time, the first day of such period shall be included and the last day of such period shall be excluded.

ARTICLE 2 - SCOPE AND NATURE OF SHAREHOLDERS' RELATIONSHIP

- 2.1 Scope of Agreement** – This Agreement governs and defines the respective rights, interests, powers and obligations of the Shareholders to each other and the Company as beneficial owners of Equity Shares.
- 2.2 Relationship** –
- (a) The Shareholders expressly disclaim any intention to create a partnership or joint venture and nothing in this Agreement shall constitute any Shareholder as the agent of any other Shareholder.
 - (b) No Shareholder shall have or represent that it has the authority or power to act for or to undertake or create any obligation or responsibility, express or implied, on behalf of or in the name of any other Shareholder or shall be, or represent that it is, the agent or legal representative of any other Shareholder.
 - (c) The Shareholders shall not, by virtue of the provisions of this Agreement or their ownership of Equity Shares, be deemed or construed to be carrying on business together.
- 2.3 Separate Activities** – Except as otherwise specifically provided in this Agreement or any other agreement executed by the Shareholders, each of the Shareholders shall have the absolute right to continue, expand, diminish or cease to carry on its existing undertaking and to engage in undertakings separate and apart from the Company. The provisions of this Agreement shall not in any way impose upon any Shareholder a fiduciary duty by reason of its carrying on its separate undertaking and a Shareholder shall not, by reason

of this Agreement, have any interest in any other property owned by any other Shareholder or in any other undertaking of any other Shareholder.

- 2.4 Representations and Covenants** – Each Shareholder represents to the others that it now holds and shall continue to hold its Interest beneficially and free and clear of all restrictions, liens, encumbrances, security agreements and agreements of any kind except as specifically permitted in this Agreement.
- 2.5 Operation and Management** – None of the Shareholders shall do anything or omit to do anything it is obliged to do which might interrupt or interfere in any way, directly or indirectly, with the operation and management of the Company or which could adversely affect or prejudice the interests of the other Shareholders in the Company or the relationship of the Shareholders hereunder. For clarity, a Shareholder’s exercise of their rights to provide or withhold consent for decisions related to a certain matter as outlined in Schedule A does not constitute an interruption or interference with the operation and management of the Company.
- 2.6 Compliance with Agreement** – Each Shareholder shall at all times keep, observe and perform all of its Obligations and do all acts and things and vote its Equity Shares and otherwise exercise its rights as a shareholder to cause such meetings to be held, resolutions to be passed, documents to be executed and, to the extent permitted by applicable law, to cause its nominees on the Board to act (or to remove such nominees for failing to act), so that at all times the provisions, conditions, restrictions and prohibitions in this Agreement are complied with.

ARTICLE 3 - CORPORATE AFFAIRS

3.1 Directors and Officers–

- (a) The number, eligibility requirements, and method of appointment and election of Directors are outlined in Schedule B hereto.
- (b) Aside from the first Directors, whose term is outlined in Schedule B, every Director will serve for two Annual General Meeting Intervals and will cease to hold office immediately after to the annual general meeting marking the end of their term.
- (c) At the end of their term, Directors may be reappointed or re-elected for up to two additional terms. For clarity, Directors may serve a maximum of three terms.
- (d) At every annual general meeting of the company, the Shareholders must appoint or elect Directors in accordance with these Articles to fill vacancies created by preceding Directors whose terms have expired such that the board of Directors consists of the number of Directors as set under these articles.

- (e) In the event of any vacancy on the Board, such vacancy shall be filled by a Person designated by the Shareholder who appointed or elected the former Director whose loss of office created the vacancy, or by at least a 3/5 resolution of the Shareholders if the former Director whose loss of office created the vacancy was appointed by at least a 3/5 resolution of the Shareholders.
 - (f) The quorum required for the transaction of business at a Board meeting shall be five Directors, and all resolutions of the Board require the favourable votes of a majority of the Directors.
 - (g) In the event that a Director fails to vote and act as a Director to carry out the provisions of this Agreement, then the Shareholders agree to exercise their rights as Shareholders of the Company and in accordance with the Act to remove such Director from the Board and to appoint in his or her place an individual who will use his or her best efforts to carry out the provisions of this Agreement, and the vacancy created by the removal of such Director will be filled in accordance with subsection 3.1(e).
 - (h) Without limiting section 3.1(g), a Director shall be deemed to have failed to act as a Director by not attending three consecutive meetings of the Board without cause. Acceptable absences may include health issues, or the death of a family member.
- 3.2 Restriction on Certain Decisions** – No action shall be taken by the Company in respect of or within the scope of the matters outlined in Schedule A except in accordance with the procedures outlined in Schedule A.
- 3.3 Officers** – The Officers of the Company will be determined from time to time by the Board, in its sole discretion.

ARTICLE 4 - CORPORATE RECORDS AND REPORTING

- 4.1 Books and Records** – The Company shall at all times maintain proper books of account, which shall contain accurate and complete records of all transactions, receipts, expenses, assets and liabilities of the Company. The Company shall maintain a system of accounting and reporting established and administered in accordance with GAAP.
- 4.2 Financial Year** – The financial year of the Company shall end on December 31 in each year.
- 4.3 Budgets and Reporting** – The Company shall prepare and deliver to the Shareholders:
- (a) at least 60 days before the commencement of each financial year of the Company, a budget in respect of the ensuing financial year, including the financial and cash flow forecast of the projected business activities and operations of the Company, including estimates of proposed and committed expenditures, the subject matter of each

expenditure, all sources of revenue, cash and financing of the Company for the ensuing year and a statement of objectives and plans; and

- (b) annually, within 90 days after the end of its last financial year, comparative financial statements relating separately to the last financial year and the financial year preceding the last financial year, including a balance sheet as at the date to which it is made up, an income statement, a statement of changes in financial position and a statement of changes in retained earnings, together with the report of the Auditor thereon prepared in accordance with generally accepted auditing standards (the “**Financial Statements and Report**”);
- (c) annually, at the Company’s Annual General Meeting, a report, for the latest financial year of the Company, on the operation and performance of the Company that, without limitation:
 - (a) details the Company's initiatives and efforts,
 - (b) details the most recent Financial Statements and Report;
 - (c) assesses the Company's past year performance using measures, tracking and reporting that are informed by the Economic Development Strategy, and
 - (d) outlines important initiatives and events the Directors have planned for the upcoming year in accordance with the Economic Development Strategy.
- (d) such other information, accounts, data and projections reasonably practicably obtainable by the Company as any Shareholder may reasonably request from time to time.

All financial statement and other reporting made pursuant to this section shall be prepared in accordance with GAAP applied consistently with prior periods.

4.4 Semi-Annual Briefings – The Directors will provide semi-annual briefings to each of the Shareholders on the operation and performance of the Company.

4.5 Shareholders’ Right of Inspection and Inquiry – The Company shall permit Persons designated by any Shareholder, including accountants or management consultants or others appointed by the Shareholder, to visit and inspect, at the Shareholder's expense, any properties of the Company, to examine the books and financial records of the Company and to discuss its affairs, finances and accounts with the financial officers of the Company, all at such reasonable times and as often as may reasonably be requested by the Shareholder. The Company agrees to answer any inquiries which such Persons may make fully and fairly and to the best of its ability, and agrees that such Persons may discuss the business and affairs of the Company with the officers, Directors and

employees of the Company and with the auditors or accountants of the Company and others reasonably expected to have knowledge of the relevant matters.

4.6 Records Confidential – Each Shareholder acknowledges that all records, material and information pertaining to the Company and any copies thereof obtained by any Shareholder are and shall remain the exclusive property of the Company. For so long as the Company carries on business, each of the Shareholders and the Company shall keep in the strictest confidence, shall not disclose and shall not use, without the consent of the Company or such Shareholder to which the information relates, all non-public information pertaining to or concerning the Company and the Shareholders, including all budgets, forecasts, analyses, financial results, things described in section 4.3, costs, margins, wages and salaries, bids and other business activities, all supplier and customer lists, all non-public intellectual property including trade secrets, unfiled patents, trademarks and technical expertise documentation (including standard terms and agreements).

4.7 Auditor – The Shareholders shall appoint [REDACTED] as Auditor. In any financial year, the Company shall direct the Auditor to audit the financial statements of the Company. The Company and the Shareholders shall afford the Auditor access to all books of account, records, vouchers, cheques, papers and documents of or which may relate to the Company, including those of the Shareholders to the extent that the books, records, vouchers, cheques, papers and documents relate to the Company. The Shareholders may from time to time, by unanimous written consent, appoint a new or further Auditor.

4.8 Public Meeting Reporting –

- (a) Annually, immediately following the Company’s annual general meeting, the Company will hold a public information meeting to inform the public about the activities and achievements of the Company and to provide the public with an opportunity to meet and ask questions of Directors and senior officers of the Company regarding the Company.
- (b) At each public information meeting of the Company, the Directors will provide and present a report, for the latest financial year of the Company, on the operation and performance of the Company that, without limitation:
 - (a) details the Company's initiatives and efforts,
 - (b) assesses the Company's past year performance using progress measures that are informed by the Economic Development Strategy, and
 - (c) outlines important initiatives and events the Directors have planned for the upcoming year in accordance with the Economic Development Strategy.

ARTICLE 5 - TRANSFER AND DISPOSITION OF INTEREST

- 5.1 General Prohibition** – No Interest or any part thereof shall be sold, exchanged, transferred, disposed of, encumbered, given, devised, or bequeathed, whether directly or indirectly, and no agreement or commitment shall be made to do any of those things except to transfer such Interest to the Company in accordance with requirements of this Article 5. The Company shall not register or permit the registration of any transfer of any Interest or part thereof made otherwise than in compliance with the provisions of this Agreement.
- 5.2 Commitment** –
- (a) A Shareholder is prohibited from withdrawing from this Agreement and transferring, surrendering, giving, devising or bequeathing, whether directly or indirectly, its Interest, until December 31, 2025 (the “**Initial Commitment Date**”).
 - (b) Any time prior to the Initial Commitment Date, a Shareholder may provide the Company with written notice indicating that the Shareholder intends to withdraw from this Agreement and transfer its Interest on the day that immediately precedes the date of the Company’s fourth anniversary of incorporation.
 - (c) Each Shareholder acknowledges and agrees that:
 - (a) if it provides notice in accordance with subsection 5.2(b), its withdrawal from this Agreement and transfer of Interest will become effective on the day that immediately precedes the date of the Company’s fourth anniversary of incorporation; and
 - (b) it will continue to honour any financial commitment made by the Shareholder to a project or initiative of the Company that continues past its withdrawal from this Agreement and transfer of its Interest.
 - (d) After the deadline to withdraw from this Agreement and transfer their Interest specified in section 5.2(b) has passed, the Shareholders that have not given notice under section 5.2(b) are prohibited from withdrawing from this Agreement and transferring, surrendering, giving, devising or bequeathing, whether directly or indirectly, their Interest, from the Initial Commitment date until the sixth anniversary of incorporation.
 - (e) After the date of the Company’s 6th anniversary of incorporation, the Shareholder’s may withdraw from this Agreement and transfer their shares in accordance with section 5.3 and 5.4 of this Agreement.

Section 5.2 (c)(ii) will survive the termination of this Agreement or any Shareholder’s withdrawal therefrom.

5.3 Withdrawal and Transfer of Interest – Each Shareholder agrees that it may only withdraw from this Agreement by:

- (a) giving notice of withdrawal in writing to the other Shareholders, and
- (b) transferring any Interest it holds to the Company.

A Shareholder's withdrawal will become effective when it has completed (a) and (b) above.

5.4 Rights of Shareholder on Withdrawal and Transfer – When a Shareholder withdraws from this Agreement and transfers its Interest:

- (a) the Shareholder will not be entitled to any compensation in exchange for transferring its Interest to the Company, and
- (b) the Company shall retain all rights to land, buildings, assets and other personal or real property owned or held by the Company or held in trust for the Company, and a withdrawing shareholder will absolutely transfer to the other remaining shareholder's (or the Company), without any compensation whatsoever, all its right, title and interest and shall execute such documents as may be necessary to give effect to this transfer.

ARTICLE 6 - FUNDING MODEL AND REVIEW

6.1 Base Funding – Annually, the Shareholder's will base funding to the Company that is intended to cover the expenses outlined in Schedule C to this Agreement.

6.2 Amount and Payment of Base Funding

- (a) The total amount of base funding required by the Company each year will be determined by the Directors and presented to the Shareholder's by the Directors as part of the Company's annual budget.
- (b) The share of base funding payable by each Shareholder is outlined in Schedule C to this Agreement.
- (c) The Shareholder's will pay their share of annual base funding to the Company after receiving the annual budget for the upcoming financial year of the Company and at least 30 days before the commencement of the financial year of the Company.

6.3 Three Year Review –

- (a) Three years after the Initial Commitment Date, the City of Nanaimo will undertake a review of the Company that will include:

- (a) an examination of the Company's mandate, structure, funding, and performance, along with other factors that the Shareholders may identify;
 - (b) assesses the level of community and Shareholder support for the Company;
 - (c) examines the potential to expand the Company's service area to include the broader mid-Vancouver Island economic region; and
 - (d) identifies possible changes to the Company's corporate model for consideration by the Shareholders.
- (b) After completing its review under subsection 6.3 (a), the City of Nanaimo will provide its findings to the Company and the Shareholder's prior to the Company's fourth anniversary of incorporation.

ARTICLE 7 - DEFAULT

7.1 Event of Default – It is an event of default ("**Default**") if a Shareholder ("**Defaulting Shareholder**"):

- (a) fails to observe, perform or carry out any of its obligations hereunder and such failure continues for 30 days after any of the Shareholders not in default (individually "**Non-Defaulting Shareholder**" and collectively "**Non-Defaulting Shareholders**") has in writing demanding that such failure be cured;
- (b) fails to take reasonable actions to prevent or defend assiduously any action or proceeding in relation to any of its Interest for seizure, execution, or attachment or which claims:
 - (a) possession of its Interest;
 - (b) sale of its Interest;
 - (c) foreclosure in respect of its Interest;
 - (d) the appointment of a receiver or a receiver-manager of the Defaulting Shareholder's assets; or
 - (e) forfeiture or termination, of or against, any of the Interest of the Defaulting Shareholder,

and such failure continues for 30 days after a Non-Defaulting Shareholder has in writing demanded that the same be taken or the Defaulting Shareholder fails to defend successfully any such action or proceeding; or

- (c) becomes bankrupt or commits an act of bankruptcy or if a receiver or receiver-manager of its assets is appointed or makes an assignment for the benefit of creditors or otherwise.

7.2 Consequences of Default – In the event of a Default under section 7.1, the Non-Defaulting Shareholders may do one or more of the following:

- (a) pursue any remedy available to them in law or equity, it being acknowledged by each of the Shareholders that specific performance, injunctive relief or other equitable relief may be the only adequate remedy for a Default;
- (b) take all actions in their own names or in the names of the Defaulting Shareholder, the Shareholders or the Company, as may be reasonably required to cure the Default, in which event all payments, costs and expenses incurred therefore shall be paid by the Defaulting Shareholder to the Non-Defaulting Shareholders on demand with interest at the rate of 5% per year; and
- (c) waive the Default, provided however that any waiver of a particular Default shall not operate as a waiver of any subsequent or continuing Default.

ARTICLE 8 - DISPUTE RESOLUTION

- 8.1** The parties hereto agree to attempt to resolve all disputes arising out of or in connection with this Agreement through discussion between the Shareholders.
- 8.2** If a dispute cannot be settled within a period of thirty (30) days after the mediator is appointed, or such longer period agreed to by the parties, all disputes arising out of, or in connection with, this Agreement shall be referred to and finally resolved by a single arbitrator (the “Arbitrator”) pursuant to the *Arbitration Act, S.B.C. 2020, c.2*, as amended.

ARTICLE 9 - General

- 9.1 Issue of Additional Equity Shares.** The Company shall not allot or issue Equity Shares to any Person not a signatory to this Agreement except in accordance with the procedure outlined in Schedule “D”.
- 9.2 Share Certificates** – Each share certificate issued shall have endorsed on it the following notation:

“THE TRANSFER OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE IS SUBJECT TO THE RESTRICTIONS CONTAINED IN THE ARTICLES OF THE COMPANY. THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS ON TRANSFER AND TO OTHER RIGHTS AND OBLIGATIONS SET FORTH IN A SHAREHOLDERS AGREEMENT BETWEEN THE COMPANY AND ITS SHAREHOLDERS, AS SUCH AGREEMENT MAY BE AMENDED, RESTATED OR REPLACED FROM TIME TO TIME.”

9.3 **Advisory Committees –**

- (a) The Directors may appoint advisory committees to engage the broader community in the economic development of the City of Nanaimo; assist in implementing the Economic Development Strategy; provide advice on new and ongoing Company initiatives; and to attend to the business of the Directors. In determining the type of advisory committees that it wishes to appoint, the directors will consider the Economic Development Strategy, requests from the community in Nanaimo, and its own needs.
- (b) In connection with section 9.3(a), the first Directors will, within a reasonable time after their election, appoint and maintain the following advisory committees:
 - (a) a governance committee that creates and implements policies and procedures governing the procedure of the board, including in relation to meeting frequency and procedure; and
 - (b) a finance committee that creates and implements policies and procedures governing financial activities of the board, including expenditure approval and expense reimbursement.

9.4 Conflict of Memorandum or Articles. In the event of inconsistency between this Agreement and either or both of the Memorandum or Articles, this Agreement shall apply and prevail, and the Parties shall immediately make all changes to the Memorandum and Articles as are necessary and lawful to render them consistent with this Agreement.

9.5 Termination of Agreement. This Agreement shall come into force and be effective as of and from the date of this Agreement and will continue in full force until this Agreement is terminated by the written agreement of the Shareholders or the Company is dissolved pursuant to the Act. Notwithstanding the foregoing, the obligation to pay all instalments for Equity Shares purchased pursuant to this Agreement shall survive any termination of this Agreement.

9.6 Remedies. The Parties acknowledge and agree that all restrictions contained in this Agreement are reasonable and valid and that all defences to the strict enforcement thereof are hereby waived, and that the rights, privileges, restrictions and conditions set forth in this Agreement are special and unique such that a breach thereof cannot be adequately compensated through an award of damages. Accordingly, any Party shall be entitled to temporary and permanent injunctive relief or for an order for specific performance, as the case may be, against every other Party who is in breach of this Agreement without the necessity of having to prove damages. Any remedy set forth in or contemplated by this Agreement shall be in addition to and not in substitution for or dependent upon any other remedy.

- 9.7 Entire Agreement.** This Agreement, together with any schedules attached to this Agreement and any agreements and documents to be delivered pursuant to the terms of this Agreement, constitutes the entire agreement between the Parties pertaining to the subject matter of this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written. There are no conditions, warranties, representations or other agreements between the Parties in connection with the subject matter of this Agreement, whether oral or written, express or implied, statutory or otherwise, except as specifically set out in this Agreement.
- 9.8 Amendment.** No amendment to this Agreement will be effective unless made in writing and signed by the Parties.
- 9.9 Waiver.** A waiver of any default, breach or non-compliance under this Agreement is not effective unless in writing and signed by the Party to be bound by the waiver. No waiver shall be inferred from or implied by any failure to act or delay in acting by a Party in respect of any default, breach, non-observance or by anything done or omitted to be done by the other Party. The waiver of a Party of any default, breach or non-compliance under this Agreement shall not operate as a waiver of that Party's rights under this Agreement in respect of any continuing or subsequent default, breach or non-compliance (whether of the same or any other nature).
- 9.10 Governing Law.** This Agreement shall be construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable in the Province of British Columbia and shall be treated in all respects as a British Columbia contract. Each of the parties irrevocably attorns to the jurisdiction of the courts of the Province of British Columbia.
- 9.11 Severability.** Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.
- 9.12 Time of Essence.** Time is of the essence of this Agreement.
- 9.13 Further Assurances.** Each Party shall promptly do, execute, deliver or cause to be done, executed and delivered all further acts, documents and things in connection with this Agreement that the other Party may reasonably require for the purposes of giving effect to this Agreement.
- 9.14 Notices.**
- (a) Any notice or other communication required or permitted to be given by this Agreement shall be in writing and shall be effectively given and made if delivered personally, sent by

prepaid courier service, sent by registered mail, or sent by prepaid telecopier, telex or other similar means of electronic communication, in each case to the applicable address set out below:

- (a) if to the City of Nanaimo

455 Wallace Street
Nanaimo, BC V9R 5J6

Attention:
Email:
Phone:

- (b) if to Snuneymuxw First Nation

668 Centre Street
Nanaimo, BC V9R 4Z4

Attention:
Email:
Phone:

- (c) if to the Nanaimo Port Authority

Box 131
Nanaimo, BC V9R 5K4

Attention:
Email:
Phone:

- (d) if to the Nanaimo Airport Commission

3238 Mustang Road
Cassidy, BC V0R 1H0

Attention:
Email:
Phone:

- (e) if to the Nanaimo Chamber of Commerce

2133 Bowen Road
Nanaimo, BC V9S 1H8

Attention:
Email:
Phone:

(f) if to Vancouver Island University

900 Fifth Street
Nanaimo, BC V9R 5S5

Attention:

Email:

Phone:

Any notice or other communication so given shall be deemed to have been given and received on the day of delivery if delivered, or on the day of faxing or sending by other means of recorded electronic communication, provided that such day is a Business Day and such notice or other communication is so delivered, faxed or sent prior to 4:30 p.m. on such day. Otherwise, such notice or communication shall be deemed to have been given and received on the next following Business Day. Any notice or other communication sent by registered mail shall be deemed to have been given and received on the fifth Business Day following the mailing thereof; provided however that no such notice or other communication shall be mailed during any actual or apprehended disruption of postal services. Any such notice or other communication given in any other manner shall be deemed to have been given and received only upon actual receipt.

(b) Any Party may from time to time change its address under this section 9.14 by notice to the other Party given in the manner provided by this Section.

9.15 Tender. Any tender of documents pursuant to this Agreement may be made upon the Parties or their respective solicitors.

9.16 Successors and Assigns. This Agreement shall enure to the benefit of, and be binding on, the Parties and their respective heirs, executors, administrators, successor and permitted assigns. No Shareholder may assign or transfer, whether absolutely, by way of security or otherwise, all or any part of its rights or obligations under this Agreement, without the prior consent of the other Shareholders.

9.17 Counterparts. This Agreement may be executed in counterparts, which together shall be deemed to constitute one agreement.

9.18 Snuneymuxw First Nation. One of the Class B Shareholders is the Snuneymuxw First Nation, and this Agreement and any communications or negotiations between the Parties with respect to this Agreement, and Snuneymuxw's interest in the Company and participation in its mind and management shall not be interpreted in a manner that extinguishes, abrogates or diminishes the rights of Snuneymuxw, including Aboriginal or treaty rights or title which are protected under section 35 of the Constitution Act, 1982 and the Snuneymuxw Treaty 1854. For greater certainty nothing in this Agreement and Snuneymuxw's interest in the Company and participation in its management constitutes

consultation or consent of Snuneymuxw for the purpose of discharging the Crown's honour and fiduciary duty in relation to developments that impact upon Snuneymuxw's indigenous interests.

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IN WITNESS WHEREOF this Agreement has been duly executed on the dates set out below, and is effective from and after the last date signed.

CITY OF NANAIMO by its authorized signatories:)
)

C/S

Name:)

Name:)

Date: _____)

SNUNEYMUXW FIRST NATION by its authorized signatories:)
)

C/S

Name:)

Name:)

Date: _____)

NANAIMO PORT AUTHORITY by its authorized signatories:)
)

C/S

Name:)

Name:)

Date: _____)

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NANAIMO AIRPORT COMMISSION by its)
authorized signatories:)

C/S

_____))
Name:)

_____))
Name:)

Date: _____))

NANAIMO CHAMBER OF COMMERCE by)
its authorized signatories:)

C/S

_____))
Name:)

_____))
Name:)

Date: _____))

DRAFT

VANCOUVER ISLAND UNIVERSITY by its)
authorized signatories:)

C/S

_____))
Name:)

_____))
Name:)

Date: _____))

SCHEDULE "A"**SPECIAL MATTERS REQUIRING SHAREHOLDERS' APPROVAL AND METHOD OF APPROVAL**

1. No action shall be taken by the Company in respect of or within the scope of the following matters unless such action receives unanimous consent of the Class A Shareholders of the Company:
 - a. the incurrence, whether absolutely or contingently, of indebtedness for borrowed money whether directly or by capital or financing lease or other indirect financing arrangements; and
 - b. the authorization, creation, issuance or transfer of any Class A Shares.
2. No action shall be taken by the Company in respect of or within the scope of the following matters unless such action receives consent of the 2/3 of the Shareholders of the Company:
 - a. the authorization, creation, issuance or transfer of any Class B or C Shares;
 - b. any material change to or within the Business of the Company;
 - c. the composition and authority of, and method of appointment to, the Agency's Board of Directors
3. No action shall be taken by the Company in respect of or within the scope of the following matters unless such action receives consent by at least a 3/5 resolution of the Board and has been first authorized by a unanimous resolution of the Shareholders:
 - a. The Budgets of the Company required by section 4.3. The approval of any Budget which includes and specifically identifies transactions of the types described in this Schedule (whether or not this Schedule is referred to) shall be considered approval of such transactions as required by this section;
 - b. Any direct or indirect participation by the Company in any business other than the Business of the Company;
 - c. The acquisition of assets not normally used in the conduct of the Business of the Company;
 - d. Any material contract, agreement, obligation, liability or other transaction which is not in the ordinary course of the Business of the Company, or with a value in excess of \$100,000.00;
 - e. Any material discontinuance of the Business of the Company;

- f. The lending of money by the Company or the incurrence of any guarantee or indemnity obligations;
- g. Any contract, agreement or other transaction which directly or indirectly provides or could provide to any Shareholder or any Person not at arm's length with a Shareholder any direct or collateral benefit or advantage whether or not greater than fair market value;
- h. The appointment or dismissal of officers and other senior employees of the Company, or their compensation, prerequisites and severance payments;
- i. Any declaration or payment of dividends or commitment to make or the making of a distribution of surplus or earnings or return of capital or Equity Share;
- j. Any acquisition or agreement to acquire any business or capital asset, any capital or financing lease (or agreement to enter into such a lease) of real or personal property or any acquisition or agreement to acquire property by way of conditional sale agreement or purchase money security interest having a value in excess of \$100,000.00 in respect of any one transaction or series of transactions in respect of any one fiscal year, provided that the foregoing limit shall not apply to those acquisitions or agreements to acquire contemplated by an approved and current annual budget for the Company;
- k. Any sale, lease, exchange, mortgage or other disposition of substantially all of the property or assets of the Company or of a part of the property or assets of the Company;
- l. Any amalgamation or merger of the Company with any other body corporate, or any corporate reorganization of the Company of any kind including a continuance, re-incorporation or arrangement, or a dissolution, liquidation or winding-up of the Company;
- m. Any fundamental change of the types referred to in the Act; and
- n. Any change of the Auditors

SCHEDULE B

NUMBER AND METHOD OF ELECTION AND APPOINTMENT OF DIRECTORS

1. The Board shall be comprised of nine Voting Directors and one Non-Voting Director.
2. The Board shall be appointed and elected as follows:
 - (a) the City of Nanaimo shall appoint:
 - (a) one City of Nanaimo senior staff member to serve as a voting Director, and
 - (b) one elected official of the City of Nanaimo as a non-voting Director;
 - (b) the Snuneymuxw First Nation shall appoint one Director to serve as a voting Director;
 - (c) the Nanaimo Port Authority shall appoint one Director to serve as a voting Director;
 - (d) the Nanaimo Airport Commission shall appoint one Director to serve as a voting Director;
 - (e) the Nanaimo Chamber of Commerce shall appoint one Director to serve as a voting Director; and
 - (f) Vancouver Island University shall appoint one Director to serve as a voting Director;
 - (g) the Shareholders will mutually elect, via at least a 3/5 resolution, three Directors, including at least one Director employed by a not-for-profit or charity organization that has mandate related to poverty alleviation or providing educational services or other resources for children, who apply to be Directors through a public call by the Company for applicants.
3. The initial term of appointment of the first Directors of the Company will be as follows:
 - (a) the first Directors appointed by the City of Nanaimo (as to the voting Director and not the non-voting Director), Snuneymuxw First Nation, Vancouver Island University, Nanaimo Port Authority, Nanaimo Airport Commission and Nanaimo Chamber of Commerce, and will serve until the Company's third annual general meeting, immediately before which they will cease to hold office; and
 - (b) the remaining first Directors, including the non-voting Director appointed by the City of Nanaimo, will serve until the Company's second annual general meeting, immediately after which they will cease to hold office.

Schedule C

Determination and Responsibility for Base Funding

1. Expenses Covered by Base Funding

The following expenses will be covered by base funding:

- (a) staffing costs;
- (b) Board operating costs;
- (c) office expenses, including for renting or leasing space;
- (d) marketing, business development, talent development, and other initiatives aimed at attracting business and investment to Nanaimo;
- (e) community outreach and reporting; and
- (f) other costs identified by the Board and approved as "base funding" by at least a 3/5 resolution of the Shareholders.

2. Share of Base Funding

The Shareholders will contribute the base funding to the Company in each financial year starting in 2022:

- (a) Class B Shareholder's will contribute \$10,000.00 and the Class B Shareholder's shall have the option, at its discretion, to make such contribution in cash or as an "in kind" contribution equivalent to the cash contribution;
- (b) Class C Shareholders are not required to make a financial contribution or an "in kind" contribution; and
- (c) Class A Shareholder's will contribute the balance between the Class B and C Shareholder contributions and the total base funding required by the Company as determined by the Directors in accordance with section 6.2.

Schedule D**Restrictions on Share Issuance**

1. Class A shares may only be issued or transferred to or held by a municipality incorporated under the *Community Charter or Local Government Act* or a regional district incorporated under the *Local Government Act*.
2. Class B shares may only be issued or transferred to or held by: a first nation, federal port authority, airport commission, a club, society, association or corporation that is organized and operated exclusively for social welfare, civic improvement, or for any other purpose except profit; a charity as defined under section 149.1(1)(l) of the *Income Tax Act* or an equivalent section outlining what constitutes a “charity” under that Act; or a first nation.
3. Class C shares may only be issued or transferred to or held by: a public university that is incorporated and operated under the *University Act*.

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