

## PURCHASE AND SALE AGREEMENT

**THIS AGREEMENT** dated for reference this 26<sup>th</sup> day of June, 2017.

BETWEEN:

**CITY OF NANAIMO**

455 Wallace Street  
Nanaimo, B.C.  
V9R 5J6

(the "**Vendor**")

OF THE FIRST PART

AND:

**PEG DEVELOPMENT INC.**

180 North University Avenue  
Provo, Utah, USA  
84601

(the "**Purchaser**")

OF THE SECOND PART

**W H E R E A S:**

- A. The Vendor is the registered owner in fee simple of the Property (as herein defined);
- B. The Vendor, pursuant to the Request for Offers (as herein defined), made the Property available for purchase for the purpose of redevelopment;
- C. The Purchaser, pursuant to the Proposal (as herein defined), offered to purchase the Property for redevelopment as a hotel;
- D. The Vendor has agreed to sell and the Purchaser has agreed to purchase all of the right, title, and interest of the Vendor in and to the Property, on the terms and conditions set out in this Agreement.

**NOW THEREFORE** in consideration of the Purchase Price and the mutual covenants and agreements contained in this Agreement, the parties agree as follows:



## 1.0 DEFINITIONS

### 1.1 In this Agreement the following terms shall have the following meanings:

**"Affiliate"** has the meaning assigned in the *Canada Business Corporations Act*.

**"Agreement"** means this Purchase and Sale Agreement, including its Recitals and Schedules.

**"Business Day"** means any day except Saturday, Sunday, or a holiday as defined in the *Interpretation Act* (British Columbia).

**"Completion Date"** means (unless the parties agree otherwise in writing) the date that is thirty (30) days following the satisfaction or waiver of all the conditions precedent under sections 4.1 and 4.3 of this Agreement or, if such date falls on a day that is not a Business Day, the next Business Day following such date.

**"Contaminants"** means any explosives, radioactive materials, asbestos materials, urea formaldehyde, chlorobiphenols, hydrocarbon contaminants, underground or above ground tanks, pollutants, contaminants, hazards, corrosive or toxic substances, special waste, hazardous waste or waste of any kind or any other substance the storage, manufacture, disposal, handling, treatment, generation, use, transport, remediation or release into the environment of which is prohibited, controlled, regulated or licensed under Environmental Laws.

**"Deposit"** means the sum of FIFTY THOUSAND (\$50,000.00) DOLLARS.

**"Environmental Laws"** means any and all statutes, laws, regulations, orders, bylaws, standards, guidelines, protocols, criteria, permits, codes of practice, and other lawful requirements of any federal, provincial, municipal or other governmental authority having jurisdiction over the Lands, now or hereafter in force relating in any way to the environment, environmental assessment, health, occupational health and safety, protection of any form of plant or animal life, product liability, or transportation of dangerous goods, including the principles of common law and equity.

**"Goods and Services Tax" or "GST"** means the goods and services tax levied pursuant to the *Excise Tax Act* (Canada).

**"Option to Purchase"** means the option to purchase the Property in favour of the Vendor in the form attached to this Agreement as Schedule "B".

**"Permitted Encumbrances"** means all exceptions, reservations, legal notations, liens, charges, and encumbrances listed in the attached Schedule "A".

**"Project"** means the development and operation of a six-storey, 118 room hotel on the Property, substantially in accordance with the Proposal.

**"Proposal"** means the proposal submitted by the Purchaser on January 27, 2017, in response to the Request for Offers.

**"Property"** means those lands and premises legally described as PID 029-126-002, Lot A, Section 1, Nanaimo District and of the Bed of the Public Harbour of Nanaimo, Plan EPP30518.

**"Purchase Price"** means the sum of SEVEN HUNDRED FIFTY THOUSAND (\$750,000.00) DOLLARS, excluding GST, Property Transfer Tax, or like charges.

**"Request for Offers"** means Request for Offers No. 1861 issued by the Vendor to elicit proposals for the purchase and development of the Property.

## 2.0 PURCHASE AND SALE

2.1 The Purchaser agrees to purchase from the Vendor, and the Vendor agrees to sell to the Purchaser, on the terms and conditions contained in this Agreement, a good and marketable freehold title to the Property, free and clear of all liens, charges and encumbrances, except for the Permitted Encumbrances.

### 2.2 Form of Payment

All payments from the Purchaser to the Vendor under this Agreement shall be made to the Vendor's solicitors by way of solicitor's or notary's trust cheque, bank draft or wire transfer.

### 2.3 The Purchase Price

The Purchaser will pay the Purchase Price to the Vendor as follows:

- (a) by payment of the Deposit to the Vendor's solicitors within three (3) Business Days following the execution of this Agreement by the Vendor and the Purchaser; and
- (b) as to the balance of SEVEN HUNDRED THOUSAND (\$700,000.00) DOLLARS, as adjusted in accordance with section 2.7, by payment on or before the Completion Date in accordance with Article 6.0.

### 2.4 Deposit

The Deposit will be held by the Vendor's solicitors in trust as a stakeholder pursuant to the provisions of the *Real Estate Services Act*.

### 2.5 Payment of Deposit to Vendor

The Deposit will be paid to the Vendor:

- (i) on the Completion Date on account of the Purchase Price, if the Vendor and the Purchaser complete the sale and purchase of the Property on the Completion Date; or

- (ii) upon the default of the Purchaser, if the Purchaser is in default under this Agreement, unless such default is waived in writing by the Vendor, without prejudice to any other right or remedy of the Vendor arising out of the Purchaser's default.

## 2.6 Return of Deposit to the Purchaser

The Deposit will be returned to the Purchaser:

- (i) If any of the conditions precedent under sections 4.1 or 4.3 are not satisfied or waived in the manner and within the time provided therein;
- (ii) upon the default of the Vendor, and such payment of the Deposit so paid to the Purchaser shall be without prejudice to any other right or remedy of the Purchaser arising out of the Vendor's default, unless such default is waived in writing by the Purchaser or the Purchaser has elected to complete the purchase of the Property without prejudice to any other right or remedy of the Purchaser.

## 2.7 Adjustments

The Vendor and Purchaser will make all adjustments relating to the Property, both incoming and outgoing, including without limitation, property taxes, local improvement charges, rents, utilities, and all other matters customarily the subject of adjustment on the sale of similar properties, shall be adjusted and pro rated between the Vendor and the Purchaser as at the Completion Date so that the Vendor shall bear and pay all expenses and receive all income related to the Property which have accrued in respect of any time prior to the Completion Date and the Purchaser shall bear and pay all expenses related to the Property which accrue in respect of any time from and including the Completion Date.

## 2.8 Option to Purchase

The Purchaser shall, as a condition of closing of the purchase and sale of the Property, grant to the Vendor on the Completion Date the Option to Purchase, and shall, concurrently with the registration of the Transfer referred to in section 6.2(a), register the Option to Purchase against title to the Property with priority over all charges and encumbrances of a financial nature.

## 3.0 **REPRESENTATIONS AND WARRANTIES**

### 3.1 Vendor's Representations and Warranties

The Vendor represents and warrants to the Purchaser that as of the date of this Agreement:

- (a) The Vendor is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada);



- (b) the Vendor is the registered and beneficial owner of the fee simple interest in the Property, free and clear of all liens, charges and encumbrances except the Permitted Encumbrances;
- (c) no lien under the *Builders Lien Act* exists or, to the best of the Vendor's knowledge, is claimed with respect to the Property nor any part of the Property;
- (d) The Vendor is a municipality duly incorporated under the laws of British Columbia and vested with the powers given it under the *Community Charter*, S.B.C. 2003, c. 26, and the Vendor has full power, authority and capacity to enter into this Agreement and carry out the transactions contemplated herein, and the entering into of this Agreement and the completion of the transactions contemplated herein have, subject to satisfaction of the condition precedent under section 4.3, been duly and validly authorized by all necessary proceedings and actions of the Vendor and this Agreement is a valid and legally binding obligation of the Vendor, enforceable against the Vendor in accordance with its terms.

### 3.2 Survival of Vendor's Representations and Warranties

The representations and warranties contained in section 3.1 shall survive the Completion Date, and shall continue in full force and effect for the benefit of the Purchaser after the Completion Date, notwithstanding any independent inquiry or investigation by the Purchaser.

### 3.3 As Is Purchase

The Purchaser acknowledges and agrees with the Vendor that, except as expressly set out in this Agreement, the Vendor, its elected and appointed officials, officers, employees and agents have made no representations, warranties, inducements, guarantees, promises, consents, conditions or agreements, direct or indirect or express or implied (collectively, the "**Representations**"), and are not required to make any Representations in respect of, or in connection with the Property, including, without limitation, the Property's size, state, condition, fitness, environmental condition or impact, usefulness, topography, divisibility, suitability, use (past, present or future), purpose, utilities, improvements, services, designation, zoning, permits, boundary, access, occupants, licensees or tenants (whether legal or not), permitted encumbrances, timber, soil condition, ground or surface water condition, state of repair, latent or patent defects, any substance, Contaminants, waste, pollutant or other condition (whether toxic, hazardous, special or not), property condition disclosure statement, information on or relating to the Property, the presence or absence of, or to, any of the foregoing, or any other aspect, matter, information or thing whatsoever.

- 3.4 Except as expressly set out in this Agreement, the Purchaser is purchasing the Property "as is, where is". Without limiting the foregoing, the Purchaser acknowledges it has, prior to making this offer, used and hereafter will use its



own due diligence, resources and independent investigations to satisfy itself fully on every aspect, matter, information or thing relating to, or in connection with, the Property; that no statement or information about the Property supplied to the Purchaser by the Vendor, its elected or appointed officials, officers, employees or agents forms part of this Agreement or has been relied upon by the Purchaser, and the Vendor is released from all obligations to deliver site profiles, site investigations, permits, approvals, covenants, security, bonding, clearances, reports and information of an environmental nature, or any other consents, declarations, certificates, documents or resolutions unless expressly required by this Agreement to the contrary.

- 3.5 The Purchaser will assume, effective on the Completion Date, and at its own cost, full and complete responsibility for the environmental condition of the Property, including, without limitation, remediation work, if any, in respect thereof and releases and will indemnify and save harmless the Vendor, its elected and appointed officials, officers, employees and agents from and against any and all liabilities, obligations, duties, losses, damages, costs, expenses (including legal fees and expenses on a solicitor and own client basis, and fees and disbursements of experts, consultants and contractors, and costs and expenses with respect to or related to or arising out of the environmental condition of the Property as of the Completion Date.

3.6 Purchaser's Representations and Warranties

The Purchaser represents and warrants to the Vendor that it is a corporation duly incorporated and in good standing under the laws of the State of Utah, and the Purchaser has full power, authority and capacity to enter into this Agreement and carry out the transactions contemplated herein, and the entering into of this Agreement and the completion of the transactions contemplated herein has been duly and validly authorized by all necessary proceedings and actions of the Purchaser and this Agreement is a valid and legally binding obligation of the Purchaser, enforceable against the Purchaser in accordance with its terms.

3.7 Survival of Purchaser's Representations and Warranties, Disclaimers and Indemnity

The representations and warranties, disclaimers and indemnity contained in sections 3.3 to 3.6, inclusive, shall survive the Completion Date, and shall continue in full force and effect for the benefit of the Vendor after the Completion Date, notwithstanding any independent inquiry or investigation by the Vendor.

4.0 **CONDITIONS PRECEDENT**

4.1 Purchaser's Conditions

The obligation of the Purchaser to complete the purchase of the Property on the Completion Date is subject to the following conditions precedent being satisfied or waived in writing by the Purchaser within 120 days following execution of this Agreement by the Vendor and Purchaser:



- (a) the Purchaser having satisfied itself that upon purchasing the Property, or before, it will be entitled to enter into a Revitalization Tax Exemption Agreement with the Vendor pursuant to the Vendor's Revitalization Tax Exemption Bylaw 2011, No. 7143;
- (b) the Purchaser having obtained (or having written evidence satisfactory to the Purchaser that it will obtain following the Completion Date) a development permit from the Vendor pursuant to section 490 of the *Local Government Act*, R.S.B.C. 2015, c.1, authorizing the development of the Project;
- (c) the Vendor having confirmed in writing to the Purchaser that the Property is not currently subject to any development cost charges within the meaning of section 559 of the *Local Government Act*, R.S.B.C. 2015, c.1;
- (d) the Purchaser having conducted such due diligence as it considers appropriate (including by use of consultants of its choosing) and having satisfied itself in its sole discretion that the Property is suitable for use for the Project;
- (e) the Purchaser having satisfied itself in its sole discretion that the Project is financially viable; and
- (f) the Purchaser having entered into an arrangement with the Vendor, satisfactory to the Purchaser in its sole discretion, to provide off-street parking for the Project at the adjacent parking facilities within the Vancouver Island Conference Centre.

4.2 All of the conditions precedent set forth in section 4.1 are for the Purchaser's sole benefit and each may be waived unilaterally by the Purchaser, at the Purchaser's election. If the Purchaser does not give the Vendor notice of the satisfaction or waiver of all of such conditions precedent within the time therein provided then the Purchaser's obligation to purchase the Property will be at an end.

4.3 Vendor's Condition Precedent

The obligation of the Vendor to complete the sale of the Property on the Completion Date is subject to the following condition precedent being satisfied or waived in writing by the Vendor within 30 days following execution of this Agreement by the Vendor and Purchaser:

- (a) the council of the City of Nanaimo having approved in its sole discretion the sale of the Property on the terms and conditions set out in this Agreement.

4.4 The condition precedent set forth in section 4.3 is for the Vendor's sole benefit. If the Vendor does not give the Purchaser notice of the satisfaction of such condition precedent within the time therein provided then the Vendor's obligation to sell the Property will be at an end.

#### 4.5 Additional Consideration

In consideration of \$10.00 non-refundable now paid by the Purchaser to the Vendor, and in consideration of \$10.00 non-refundable now paid by the Vendor to the Purchaser, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the Vendor and the Purchaser, the Vendor agrees not to revoke its acceptance of the Purchaser's offer contained herein and the Purchaser agrees not to revoke its offer contained herein while this Agreement remains subject to any of the conditions precedent under sections 4.1 or 4.3.

#### 4.6 Unconditional Contract

The parties agree that this Agreement will become an unconditional contract for the sale and purchase of the Property forthwith upon the satisfaction or waiver of the conditions precedent in sections 4.1 and 4.3.

### 5.0 **RISK/POSSESSION**

#### 5.1 The Passing of Risk

The Property is at the risk of the Vendor until 12:00 noon on the Completion Date. After 12:00 noon on the Completion Date, the Property shall be at the risk of the Purchaser.

#### 5.2 Possession

The Purchaser shall have the right to vacant possession of the Property at 12:00 noon on the Completion Date, subject only to:

- (a) all exceptions, reservations, and provisos contained in the original Crown grant; and
- (b) the Permitted Encumbrances.

### 6.0 **CLOSING PROCEDURE**

#### 6.1 The Closing

The closing of the purchase and sale of the Property will occur on the Completion Date.

#### 6.2 Purchaser's Documents

The Purchaser's solicitors will prepare the following (in registrable form where applicable):

- (a) a Form A Freehold Transfer (the "**Transfer**") transferring the Property to the Purchaser free and clear of all liens, charges, and encumbrances except for the Permitted Encumbrances;

- (b) a certificate regarding the Purchaser's GST registration and status;
- (c) the Vendor's Statement of Adjustments;
- (d) the Option to Purchase;
- (e) such other documents and assurances as may be reasonably required by the Purchaser to give full effect to the intent and meaning of this Agreement.

### 6.3 Vendor's Documents

The Vendor's solicitors will prepare such other documents and assurances as may be reasonably required by the Vendor to give full effect to the intent and meaning of this Agreement.

### 6.4 Delivery of Closing Documents

The closing documents referred to in section 6.2 will be delivered to the Vendor's solicitors at least five (5) Business Days before the Completion Date.

The closing documents referred to in section 6.3 will be delivered to the Purchaser's solicitors at least five (5) Business Days before the Completion Date.

### 6.5 Return of Executed Closing Documents

The closing documents referred to in section 6.2 will be delivered to the Purchaser's solicitors in duly executed form on or before the Completion Date.

The closing documents referred to in section 6.3 will be delivered to the Vendor's solicitors in duly executed form on or before the Completion Date.

### 6.6 Payment in Trust

On or before the Completion Date the Purchaser will pay to the Purchaser's solicitors in trust the balance of the payment set out in subsection 2.3(b), as adjusted in accordance with section 2.7.

### 6.7 Registration

Forthwith following the payment in section 6.6 and after receipt by the Purchaser's solicitors of the documents and items referred to in section 6.2 and receipt by the Vendor's solicitors of the documents referred to in section 6.3, the Purchaser will cause the Purchaser's solicitors to file the Transfer and the Option to Purchase in the appropriate Land Title Office.

### 6.8 Closing

Promptly following the filing referred to in section 6.7 and upon the Purchaser's solicitors being satisfied, after conducting a post registration search, as to the

Purchaser's title to the Property, subject only to the Permitted Encumbrances, and that in the normal course of the Land Title Office's registration procedures the Option to Purchase will be registered against title to the Property in priority over all charges and encumbrances of a financial nature:

- (a) the Purchaser will cause the Purchaser's solicitors to make available to the Vendor's solicitors a solicitor's or notary's trust cheque or wire transfer for the balance of the payment set out in subsection 2.3(b), as adjusted in accordance with section 2.7;
- (b) the Purchaser will cause the documents and assurances referred to in section 6.3 to be released to the Vendor; and
- (c) the Vendor's solicitor shall be at liberty to release the Deposit to the Vendor.

#### 6.9 Concurrent Requirements

It is a condition of this Agreement that all requirements of this Article 6.0 are concurrent requirements and it is specifically agreed that nothing will be completed on the Completion Date until everything required to be paid, executed and delivered on the Completion Date has been so paid, executed and delivered and until the Purchaser's solicitors have satisfied themselves as to the Purchaser's title under section 6.8.

### 7.0 **MISCELLANEOUS**

#### 7.1 Time

Time is of the essence of this Agreement and the transactions contemplated in this Agreement notwithstanding the extension of any of the dates under this Agreement.

#### 7.2 Relationship of the Parties

Nothing in this Agreement shall be construed so as to make the Purchaser a partner of the Vendor or an owner of the Property for any purpose, including the *Builders Lien Act*, until the closing of the purchase and sale on the Completion Date.

#### 7.3 Notices

- (a) Each notice sent pursuant to this Agreement ("**Notice**") shall be in writing and shall be sent to the relevant Party at the relevant mailing address or e-mail address set out below. Each such Notice may be sent by hand, by registered mail, by commercial courier or by electronic mail. The contact information for the parties is:

<b>PEG Development Inc.</b>	<b>City of Nanaimo</b>
180 North University Avenue Provo, Utah, USA 84601 Attention: Eric Peterson  Tel: 435-647-6344 Email: <a href="mailto:epeterson@pegdev.com">epeterson@pegdev.com</a>  <u>With a copy to:</u>  Borden Ladner Gervais LLP 1200 Waterfront Centre 200 Burrard Street PO Box 48600 Vancouver, BC V7X 1T2  Attention: Donald Bird  Tel: 604-687-5744 Email: <a href="mailto:dbird@blg.com">dbird@blg.com</a>	455 Wallace Street Nanaimo, BC V9R 5J6 Attention: Bill Corsan, Manager, Real Estate  Tel: 250-755-4426 Email: <a href="mailto:bill.corsan@nanaimo.ca">bill.corsan@nanaimo.ca</a>  <u>With a copy to:</u>  Stewart McDannold Stuart 2 <sup>nd</sup> Floor, 837 Burdett Avenue Victoria, BC V8W 1B3 Attention: Michael Hargraves  Tel: 250-380-7744 Email: <a href="mailto:mhargraves@sms.bc.ca">mhargraves@sms.bc.ca</a>

- (b) Each Notice sent by electronic mail ("E-Mail Notice") must show the e-mail address of the sender, the name or e-mail address of the recipient, and the date and time of transmission, must be fully accessible by the recipient, and unless receipt is acknowledged, must be followed within twenty-four (24) hours by a true copy of such Notice, including all addressing and transmission details, delivered by hand or commercial courier.
- (c) Subject to subsections 7.3(d) through (f) each Notice shall be deemed to have been given or made at the following times:
- (i) if delivered to the address (including by commercial courier), on the day the Notice is delivered;
  - (ii) if sent by registered mail, seven (7) days following the date of such mailing by sender; or
  - (iii) if sent by electronic mail, on the date the E-Mail Notice is sent electronically by e-mail by the sender.
- (d) If a Notice is delivered or sent by electronic mail after 4:00 p.m., or if the date of deemed receipt of a Notice falls upon a day that is not a Business Day, then the Notice shall be deemed to have been given or made on the next Business Day following.

- (e) If normal mail service or electronic mail is interrupted by strike, slow down, force majeure or other cause beyond the control of the parties, then a Notice sent by the impaired means of communication will not be deemed to be received until actually received, and the party sending the Notice shall utilize any other such services which have not been so interrupted or shall personally deliver such Notice in order to ensure prompt receipt thereof.
- (f) Each Party shall provide Notice to the other Party of any change of address or e-mail address of such Party within a reasonable time of such change.

#### 7.4 Further Assurances

Each of the parties shall, at the expense of the other party, execute and deliver all such further documents and do such further acts and things as the other party may reasonably request from time to time to give full effect to this Agreement.

#### 7.5 Assignment

The Purchaser may assign its rights under this Agreement to an Affiliate of the Purchaser. The Purchaser shall not assign its rights under this Agreement to any person other than an Affiliate of the Purchaser unless it has obtained the prior written consent of the Vendor, which consent may be withheld by the Vendor in its sole and unfettered discretion. The Purchaser may direct the Vendor to transfer title to a nominee of the Purchaser on the Completion Date.

#### 7.6 Non-merger

None of the provisions of this Agreement shall merge in the transfer of the Property or any other document delivered on the Completion Date, and the provisions of this Agreement shall survive the Completion Date.

#### 7.7 Certificates

Wherever this Agreement provides for a certificate from a party, that certificate shall be signed by a responsible officer of a party, and that certificate shall be deemed to constitute a representation and warranty or a covenant, as the case may be, by the party whose officer signed the certificate.

#### 7.8 Payment of Fees

Each party shall pay its own legal fees. The Purchaser shall be responsible for all registration fees payable in connection with registration of the Transfer and the Option to Purchase. The Vendor shall be responsible for the costs of clearing title of any financial encumbrances.

7.9 Real Estate Commission

The Vendor agrees that it is the Vendor's responsibility to pay to any real estate commission payable to a licensed real estate agent as a result of the purchase and sale of the Property, and agrees that such commission plus applicable GST shall be paid by the Vendor out of the Purchase Price on the Closing Date, provided that any commission so payable by the Vendor to the agent for the Purchaser (exclusive of GST) shall not exceed 3% of the Purchase Price. The Purchaser shall be solely responsible for any commission payable to the agent for the Purchaser in excess of 3% of the Purchase Price.

7.10 Goods and Services Tax

The Purchase Price does not include GST. The Purchaser shall self-assess the GST and account directly to the Canada Revenue Agency for it, provided it delivers to the Vendor at closing a certificate confirming that the Purchaser is registered for GST purposes and its registration number. If the Purchaser is not registered for GST purposes on the Completion Date, or fails to deliver to the Vendor a certificate as aforesaid, then the Purchaser shall pay the applicable GST to the Vendor on the Completion Date as agent for Her Majesty the Queen in Right of Canada.

7.11 Binding Effect

This Agreement shall enure to the benefit of and be binding upon the parties, their respective heirs, executors, administrators, and other legal representatives and, to the extent permitted in this Agreement, their respective successors and permitted assigns.

7.12 No Derogation from Statutory Powers

Nothing in this Agreement shall be interpreted as prejudicing or impairing the Vendor in the exercise of any statutory legislative powers under the *Local Government Act*, the *Community Charter* or any other enactment all of which may be exercised as if this Agreement had not been executed. Provided that the foregoing shall not restrict or limit the rights and remedies of the Purchaser resulting or arising from a breach or non-performance of the terms of this Agreement by the Vendor.

7.13 Extended Meanings

In this Agreement words importing the singular number include the plural and vice versa, and words importing the masculine gender include the feminine and neuter genders.

7.14 Headings

The headings in this Agreement are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

7.15 Articles

For the purposes of this Agreement, except as otherwise expressly provided herein all references in this Agreement to an article, section, subsection, paragraph, or other subdivision, or to a schedule, is to the article, section, subsection, paragraph or other subdivision of or schedule to this Agreement unless otherwise specifically stated.

7.16 Applicable Law

This Agreement shall be governed by and interpreted in accordance with the laws of British Columbia.

7.17 Waiver

Except as may be specifically agreed in writing, no action or failure to act by a party to this Agreement shall constitute a waiver of any right or duty afforded any of them under this Agreement nor shall any such action or failure to act constitute an approval of or acquiescence in any breach of this Agreement.

7.18 Entire Agreement

This Agreement and the agreements set out in the Schedules hereto constitute the entire agreement between the parties with respect to the subject matter of the Agreement and contains all of the representations, warranties, covenants and agreements of the respective parties, and may not be amended or modified except by an instrument in writing executed by all parties. This Agreement supersedes all prior agreements, memoranda, and negotiations between the parties.

7.19 Schedules

The Schedules attached to this Agreement form part of this Agreement.

7.20 Counterparts

This Agreement may be executed in counterparts and when the counterparts have been executed by the parties, each originally executed counterpart, whether a facsimile, photocopy or original, will be effective as if one original copy had been executed by the parties to this Agreement.


**IN WITNESS WHEREOF** the parties have executed this Agreement.


**PEG DEVELOPMENT INC.**, by its authorized )  
signatories )

 6-30-17 )  
Name: )

CAMERON GUNTER, CEO )  
Name: )

**CITY OF NANAIMO**, by its )  
authorized signatories )

 )  
Name: Bill McKay, Mayor )

 )  
Name: Sheila Gurne, Corporate Officer )



## SCHEDULE "A"

### PERMITTED ENCUMBRANCES

#### Legal Notations

HERETO IS ANNEXED EASEMENT CA3483254  
OVER PART OF LOT B PLAN 8979

HERETO IS ANNEXED EASEMENT CA3483256 OVER PART OF  
THE BED OF THE PUBLIC HARBOUR OF NANAIMO SHOWN ON  
PLAN EPP36193 AND PART OF LOT A PLAN VIP79754 EXCEPT  
PLAN VIP85148 AS SHOWN ON PLAN EPP36194

SUBJECT TO EXCEPTIONS AND RESERVATIONS CONTAINED IN ORDER-IN-COUNCIL  
FILED D. D. 3570631 AS TO THOSE PARTS SHOWN OUTLINED IN RED ON  
PLAN 610 B.L.

HERETO IS ANNEXED PARTY WALL AGREEMENT EL62160 OVER LOT 1,  
PLAN VIP65156 EXCEPT PARTS IN AIR SPACE PLANS VIP65336 AND VIP65337  
(AS TO PART FORMERLY LOT 1, PLAN VIP79756)

EASEMENT EL62151 MODIFIED BY EM44694  
(AS TO PART FORMERLY LOT 1, PLAN VIP79756)

EASEMENT EL62152 MODIFIED BY EM44695  
(AS TO PART FORMERLY LOT 1, PLAN VIP79756)

#### Charges, Liens and Interests

Nature:	EXCEPTIONS AND RESERVATIONS
Registration Number:	M76300
Registered Owner:	ESQUIMALT AND NANAIMO RAILWAY COMPANY

Nature:	UNDERSURFACE RIGHTS
Registration Number:	M76301
Registered Owner:	HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA

Nature:	UNDERSURFACE AND OTHER EXC & RES
Registration Number:	EJ85580
Registration Date and Time:	1995-07-24 10:10
Registered Owner:	HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA

Nature:	EXCEPTIONS AND RESERVATIONS
Registration Number:	EX134762
Registration Date and Time:	2005-10-21 14:47
Registered Owner:	THE CROWN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA

Nature:	STATUTORY RIGHT OF WAY
Registration Number:	EX134776
Registration Date and Time:	2005-10-21 14:50
Registered Owner:	BRITISH COLUMBIA HYDRO AND POWER AUTHORITY
Nature:	COVENANT
Registration Number:	FB155911
Registration Date and Time:	2008-03-19 09:35
Registered Owner:	CITY OF NANAIMO
Nature:	UNDERSURFACE AND OTHER EXC & RES
Registration Number:	FB470485
Registration Date and Time:	2013-07-19 12:39
Registered Owner:	THE CROWN IN RIGHT OF BRITISH COLUMBIA
Nature:	STATUTORY RIGHT OF WAY
Registration Number:	CA3244234
Registration Date and Time:	2013-07-19 12:39
Registered Owner:	BRITISH COLUMBIA HYDRO AND POWER AUTHORITY
Nature:	STATUTORY RIGHT OF WAY
Registration Number:	CA3244235
Registration Date and Time:	2013-07-19 12:39
Registered Owner:	TELUS COMMUNICATIONS INC. INCORPORATION NO. A55547
Nature:	STATUTORY RIGHT OF WAY
Registration Number:	CA3244237
Registration Date and Time:	2013-07-19 12:39
Registered Owner:	SHAW CABLESYSTEMS LIMITED INCORPORATION NO. A0075382
Nature:	STATUTORY RIGHT OF WAY
Registration Number:	CA3244239
Registration Date and Time:	2013-07-19 12:39
Registered Owner:	CITY OF NANAIMO
Nature:	STATUTORY RIGHT OF WAY
Registration Number:	CA4220398
Registration Date and Time:	2015-02-05 10:21
Registered Owner:	FORTISBC ALTERNATIVE ENERGY SERVICES INC. INCORPORATION NO. BC0746680

Option to Purchase in favour of the City of Nanaimo in the form attached as Schedule "B"

- 18 -

**SCHEDULE "B"**  
**OPTION TO PURCHASE**  
**(see attached)**

Your electronic signature is a representation that you are a subscriber as defined by the Land Title Act, RSBC 1996 c.250, and that you have applied your electronic signature in accordance with Section 168.3, and a true copy, or a copy of that true copy, is in your possession.

1. APPLICATION: (Name, address, phone number of applicant, applicant's solicitor or agent)

STEWART McDANNOLD STUART  
BARRISTERS & SOLICITORS  
2nd FLOOR - 837 BURDETT AVENUE  
VICTORIA BC V8W 1B3

Tel.: 250 380-7744 Fax.: 250 380-3008

File No.: 194 1317 MH-jn

Deduct LTSA Fees? Yes ☒

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

[PID] [LEGAL DESCRIPTION]

029-126-002 LOT A SECTION 1 NANAIMO DISTRICT AND OF THE BED OF THE PUBLIC  
HARBOUR OF NANAIMO PLAN EPP30518

STC? YES ☐

3. NATURE OF INTEREST

Option to Purchase

CHARGE NO.

ADDITIONAL INFORMATION

Entire Document

4. TERMS: Part 2 of this instrument consists of (select one only)

(a) ☒ Filed Standard Charge Terms D.F. No.

(b) ☐ Express Charge Terms Annexed as Part 2

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument.

5. TRANSFEROR(S):

PEG DEVELOPMENT INC.

6. TRANSFEREE(S): (including postal address(es) and postal code(s))

CITY OF NANAIMO  
455 WALLACE STREET

Incorporation No

NANAIMO

BRITISH COLUMBIA

V9R 5J6

CANADA

7. ADDITIONAL OR MODIFIED TERMS:

N/A

8. EXECUTION(S): This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)

Execution Date

Y	M	D
17		

Transferor(s) Signature(s)

PEG DEVELOPMENT INC. by its  
authorized signatory(ies):

Name:

Name:

(as to both signatures)

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

LAND TITLE ACT  
FORM D

EXECUTIONS CONTINUED

PAGE 2 of 11 PAGES

Officer Signature(s)



NANCY SKEELS  
Commissioner for taking  
Affidavits for British Columbia  
455 Wallace Street  
Nanaimo, BC V9R 5J6

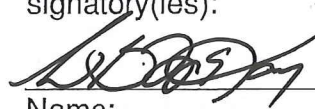
(as to both signatures)

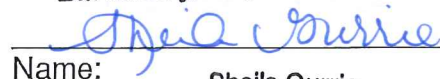
Execution Date

Y	M	D
17	06	30

Transferor / Borrower / Party Signature(s)

CITY OF NANAIMO by its authorized  
signatory(ies):

 **BILL MCKAY**  
Name: **BILL McKay, Mayor**  
**MAYOR**

  
Name: **Sheila Gurrie**

**Sheila Gurrie**  
Corporate Officer  
City of Nanaimo

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

## TERMS OF INSTRUMENT - PART 2

---

### WHEREAS:

- A. The Transferor is the registered owner in fee simple of the following lands and premises:

PID 029-126-002

Lot A, Section 1, Nanaimo District and of the Bed of the Public Harbour of Nanaimo, Plan EPP30518

(the “**Land**”);

- B. The Transferee is the City of Nanaimo;
- C. The Transferee has sold the Land to the Transferor on condition that the Transferor substantially commence development on the Land within two (2) years;
- D. To secure the obligation of the Transferor to substantially commence development on the Land within two (2) years, the Transferor has agreed to grant to the Transferee an option to purchase the Land on the terms and conditions set out herein;

**NOW THEREFORE**, in consideration of the premises and the sum of Ten Dollars (\$10.00) now paid by the Transferee to the Transferor (the receipt and sufficiency of which is hereby acknowledged by the Transferor), the parties agree as follows:

### Definitions

1. In this Agreement:
- (a) “**Agreement**” means this Agreement, including its recitals and schedules, and Forms C and D attached hereto.
  - (b) “**Completion Date**” means the 60<sup>th</sup> day following the provision of notice of the exercise of the Option by the Transferee, or if the Land Title Office is closed on such day, the next day that office is open, or such other date as may be agreed in writing by the parties;
  - (c) “**GST**” means the Goods and Services Tax levied pursuant to the *Excise Tax Act* (Canada).
  - (d) “**Improvements**” includes all improvements on the Land as of the date of exercise of the Option by the Transferee.

- (e) **"Option"** means the option to purchase the Land granted by the Transferor to the Transferee under the terms of this Agreement;
- (f) **"Option Event"** means the event that triggers the Transferee's right to exercise the Option, as set out in section 4.
- (g) **"Permitted Encumbrances"** means the liens, charges and encumbrances set out in Schedule "A" to this Agreement, together with any encumbrances in favour of the Transferee or required by the Transferee or its approving officer as a requirement of any development approval or permit in relation to the Land.
- (h) **"Purchase Price"** means the sum of SEVEN HUNDRED FIFTY THOUSAND DOLLARS, excluding GST, Property Transfer Tax, and like charges.
- (i) **"Registration Date"** means the date that this instrument is registered against title to the Land in the Land Title Office.
- (j) **"Transferor"** includes the successors in title of the Transferor.

#### **Term**

- 2. The term of this Agreement is eighty (80) years commencing on the Registration Date, provided that if the perpetuity period for the Option as specified in the *Perpetuity Act* is increased or decreased in length then the term of this Agreement will be increased or decreased accordingly.

#### **Grant of Option**

- 3. The Transferor grants to the Transferee an irrevocable option to purchase the Land and Improvements on the terms and conditions set out in this Agreement.

#### **Option Event**

- 4. The Transferee may exercise the Option in the event that the Transferor has not, within two (2) years following the Registration Date, delivered to the Transferee evidence satisfactory to the Transferee, acting reasonably, that the Transferor has substantially commenced development of the Land. Without limiting the manner in which the Transferor may substantially commence development of the Land, if the Transferor expends at least ONE MILLION DOLLARS (\$1,000,000.00) on physical improvements to the Land it will be conclusively deemed to have substantially commenced development of the Land.

### Notice of Exercise of Option

5. In order to exercise the Option, the Transferee must deliver written notice to the Transferor of the Transferee's exercise of the Option pursuant to the terms and conditions of this Option to Purchase.
6. The Transferee may exercise the Option at any time after the occurrence of the Option Event, unless prior to the exercise of the Option the Transferor has:
  - (a) delivered to the Transferee evidence satisfactory to the Transferee, acting reasonably, that the Transferor has substantially commenced development of the Land; or
  - (b) delivered to the Transferee a statutory declaration made by a director or senior officer of the Transferor stating that the Transferor has expended at least ONE MILLION DOLLARS (\$1,000,000.00) on physical improvements to the Land and providing details of such expenditure with reasonable particularity.

### General

7. The acceptance and exercising of the Option in the manner set out in this Option to Purchase constitutes a binding contract of sale and purchase of the Land and Improvements. The completion of the sale and purchase of the Land and Improvements shall take place on the Completion Date and on or before the Completion Date, the parties shall execute and deliver such documents as are reasonably required to convey title to the Land and Improvements to the Transferee, free and clear of all liens, charges and encumbrances, whether registered or unregistered, except the Permitted Encumbrances.
8. This Agreement shall terminate and the Transferee shall, at the expense of the Transferor, provide a discharge of this Agreement in registrable form, in either of the following cases:
  - (a) if the Option is not exercised in the manner set forth in this Agreement and the term set out in section 2 has expired; or
  - (b) if the Transferor has, prior to the exercise of the Option:
    - (i) delivered to the Transferee evidence satisfactory to the Transferee, acting reasonably, that the Transferor has substantially commenced development of the Land; or
    - (ii) delivered to the Transferee a statutory declaration made by a director or senior officer of the Transferor stating that the Transferor has expended at least ONE MILLION DOLLARS (\$1,000,000.00)

on physical improvements to the Land and providing details of such expenditure with reasonable particularity.

9. If the Transferee elects to acquire the Land and Improvements pursuant to this Agreement, then:
- (a) the purchase and sale of the Land and Improvements will complete on the Completion Date;
  - (b) the Transferee will be entitled to possession of the Land and Improvements at noon on the Completion Date;
  - (c) all adjustments of taxes, utilities and other items normally adjusted between a vendor and purchaser on the sale of similar property shall be made with respect to the Land and Improvements to and including the Completion Date. Real property taxes will be adjusted on the basis that current year's taxes will be 10% higher than previous years' taxes but the parties will readjust ten (10) days after determination of the actual current year real property taxes. The Transferor will pay the costs of the Transferee in relation to the transfer of the Land and Improvements, including Land Title Office registration fees and legal fees, and the purchase price shall be adjusted accordingly;
  - (d) the Land and Improvements will be at the risk of the Transferor until 12:00 noon on the Completion Date;
  - (e) all documentation required to convey the Land and Improvements to the Transferee will be prepared by its solicitors and delivered to the solicitors for the Transferor at least five (5) business days before the Completion Date, and the Transferor will execute, in registrable form, all documents necessary to transfer title to the Land and Improvements to the Transferee;
  - (f) the Transferor will execute and deliver to the Transferee such further documents and give such further assurances as the solicitors for the Transferee may require in order to carry out and give effect to the intent of this Agreement and the purchase and sale contemplated in this Agreement;
  - (g) on the Completion Date the Transferee will cause its solicitors to register the transfer of the Land and Improvements in the Land Title Office;
  - (h) following registration of the transfer of the Land and Improvements on the Completion Date, and upon the Transferee's solicitors being satisfied by way of post-registration search that title to the Land and Improvements will vest in the Transferee in accordance with ordinary Land Title Office procedures, the Transferee will pay to the Transferor by way of solicitor's

trust cheque the purchase price due to the Transferor under this Agreement, as adjusted under section 10(c).

10. After the delivery of notice under section 5, until 12:00 noon on the Completion Date the Transferor will:
  - (a) permit the Transferee and its representatives to enter onto the Land and carry out such inspections, tests, studies, appraisals, surveys and investigations of the Land and Improvements as the Transferee may reasonably require;
  - (b) cause the Land and Improvements to be maintained in the manner of a prudent owner;
  - (c) maintain insurance coverage with respect to the Land and Improvements in full force and effect until 12:00 noon on the Completion Date in such amounts and on such terms as would a prudent owner;
  - (d) not enter into or amend any contract with respect to the Land and Improvements including, without limitation, leases or service contracts, before the Completion Date without the prior written approval of the Transferee;
  - (e) grant authorizations reasonably required by the Transferee to authorize municipal or other governmental authorities to release information confirming compliance with laws, bylaws and other statutory and governmental regulations and with respect to potential statutory liens;
  - (f) pay when due any indebtedness of the Transferor to any municipal or other governmental authority which, by operation of law or otherwise, becomes a lien, charge or encumbrance on the Land or Improvements from and after the Completion Date, including without limitation, corporation capital taxes and workers compensation payments; and
  - (g) not modify, amend or cancel any of the Permitted Encumbrances without the prior written approval of the Transferee.
11. Time is of the essence of this Agreement.
12. The Transferor covenants and agrees with the Transferee to indemnify and save harmless the Transferee from and against any and all loss, damage, costs and liability whatsoever, including actual fees of solicitors and other professional advisors, arising out of any breach, violation or non-performance by the Transferor of any of its covenants or agreements in this Agreement. This indemnity shall survive the transfer of the Land to the Transferee and will not merge in such transfer.

13. Any notice required to be given under this Agreement will be in writing and will be deemed to have been received, if delivered on the date of delivery or, if mailed by prepaid registered mail, on the fourth day following the date of mailing, addressed:

In the case of the Transferee:

City of Nanaimo  
455 Wallace Street  
Nanaimo, BC  
V9R 5J6  
Attention: Manager, Real Estate

In the case of the Transferor, to the address shown on title to the Land.

14. No term, condition, covenant or other provision of this Agreement will be considered to have been waived by the Transferee unless such waiver is expressed in writing by the Transferee and the waiver by the Transferee of any such term, condition, covenant or other provision of this Agreement will not be construed as or constitute a waiver of any further or other breach of that or any other term, condition, or other provision of this Agreement.
15. This Agreement extends to, is binding upon and ensures to the benefit of the parties and their respective heirs, executors, administrators, successors and assigns.
16. In this Agreement, unless the context otherwise requires, the singular includes the plural and the masculine includes the feminine gender and a corporation.
17. The headings in this Agreement are included for ease of reference only and shall not affect the interpretation of this Agreement or any provision of this Agreement.
18. All of the provisions of this Agreement shall be construed as covenants and agreements as though the words importing covenants and agreements were used in each separate paragraph.
19. This Agreement will be interpreted according to the laws of the Province of British Columbia.
20. If any section of this Agreement or any part of a section, is found to be illegal or unenforceable, that part or section, as the case may be, will be considered separate and severable and the remaining parts or sections, as the case may be, will not be affected and will be enforceable to the fullest extent permitted by law.
21. Nothing contained or implied in this Agreement shall prejudice or affect the rights and powers of the Transferee in the exercise of its functions under any public or

private statutes, bylaws, orders and regulations, all of which may be fully and effectively exercised in relation to the Land as if the Agreement had not been executed and delivered by the Transferor.

22. This Agreement may be executed in counterparts and when the counterparts have been executed by the parties, each originally executed counterpart, whether a facsimile, photocopy or original, will be effective as if one original copy had been executed by the parties to this Agreement.

**IN WITNESS WHEREOF** the parties hereto hereby acknowledge that this Agreement has been duly executed and delivered by the parties executing Forms C and D (pages 1 and 2) attached hereto.

## SCHEDULE "A"

### PERMITTED ENCUMBRANCES

#### Legal Notations

HERETO IS ANNEXED EASEMENT CA3483254  
OVER PART OF LOT B PLAN 8979

HERETO IS ANNEXED EASEMENT CA3483256 OVER PART OF  
THE BED OF THE PUBLIC HARBOUR OF NANAIMO SHOWN ON  
PLAN EPP36193 AND PART OF LOT A PLAN VIP79754 EXCEPT  
PLAN VIP85148 AS SHOWN ON PLAN EPP36194

SUBJECT TO EXCEPTIONS AND RESERVATIONS CONTAINED IN ORDER-IN-COUNCIL  
FILED D. D. 3570631 AS TO THOSE PARTS SHOWN OUTLINED IN RED ON  
PLAN 610 B.L.

HERETO IS ANNEXED PARTY WALL AGREEMENT EL62160 OVER LOT 1,  
PLAN VIP65156 EXCEPT PARTS IN AIR SPACE PLANS VIP65336 AND VIP65337  
(AS TO PART FORMERLY LOT 1, PLAN VIP79756)

EASEMENT EL62151 MODIFIED BY EM44694  
(AS TO PART FORMERLY LOT 1, PLAN VIP79756)

EASEMENT EL62152 MODIFIED BY EM44695  
(AS TO PART FORMERLY LOT 1, PLAN VIP79756)

#### Charges, Liens and Interests

Nature:	EXCEPTIONS AND RESERVATIONS
Registration Number:	M76300
Registered Owner:	ESQUIMALT AND NANAIMO RAILWAY COMPANY

Nature:	UNDERSURFACE RIGHTS
Registration Number:	M76301
Registered Owner:	HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA

Nature:	UNDERSURFACE AND OTHER EXC & RES
Registration Number:	EJ85580
Registration Date and Time:	1995-07-24 10:10
Registered Owner:	HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA

Nature:	EXCEPTIONS AND RESERVATIONS
Registration Number:	EX134762
Registration Date and Time:	2005-10-21 14:47

Registered Owner:	THE CROWN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA
Nature:	STATUTORY RIGHT OF WAY
Registration Number:	EX134776
Registration Date and Time:	2005-10-21 14:50
Registered Owner:	BRITISH COLUMBIA HYDRO AND POWER AUTHORITY
Nature:	COVENANT
Registration Number:	FB155911
Registration Date and Time:	2008-03-19 09:35
Registered Owner:	CITY OF NANAIMO
Nature:	UNDERSURFACE AND OTHER EXC & RES
Registration Number:	FB470485
Registration Date and Time:	2013-07-19 12:39
Registered Owner:	THE CROWN IN RIGHT OF BRITISH COLUMBIA
Nature:	STATUTORY RIGHT OF WAY
Registration Number:	CA3244234
Registration Date and Time:	2013-07-19 12:39
Registered Owner:	BRITISH COLUMBIA HYDRO AND POWER AUTHORITY
Nature:	STATUTORY RIGHT OF WAY
Registration Number:	CA3244235
Registration Date and Time:	2013-07-19 12:39
Registered Owner:	TELUS COMMUNICATIONS INC. INCORPORATION NO. A55547
Nature:	STATUTORY RIGHT OF WAY
Registration Number:	CA3244237
Registration Date and Time:	2013-07-19 12:39
Registered Owner:	SHAW CABLESYSTEMS LIMITED INCORPORATION NO. A0075382
Nature:	STATUTORY RIGHT OF WAY
Registration Number:	CA3244239
Registration Date and Time:	2013-07-19 12:39
Registered Owner:	CITY OF NANAIMO
Nature:	STATUTORY RIGHT OF WAY
Registration Number:	CA4220398
Registration Date and Time:	2015-02-05 10:21
Registered Owner:	FORTISBC ALTERNATIVE ENERGY SERVICES INC. INCORPORATION NO. BC0746680

