

THIS SUBLEASE AGREEMENT MADE THIS \_\_\_\_ DAY OF \_\_\_\_\_, 20 .

BETWEEN:

BANFF HOUSING CORPORATION  
A Municipal Corporation  
Pursuant to the Laws of  
the Province of Alberta, having  
an address at P.O. Box 1260,  
110 Bear Street,  
Banff, Alberta T1L 1A1

(hereinafter called the "Corporation")  
OF THE FIRST PART

- and -

of  
Banff, AB T1L  
AS JOINT TENANTS

(hereinafter called the "Sub-Lessee")  
OF THE SECOND PART

WHEREAS the Corporation is a Municipal Housing Corporation pursuant to the MUNICIPAL GOVERNMENT ACT and the BUSINESS CORPORATIONS ACT of the Province of Alberta; and

WHEREAS the Corporation is the Lessee or is entitled to become the Lessee of all those certain Lands and premises lying and being in the Townsite of Banff (hereinafter called the "Townsite"), in the Province of Alberta, composed of all those lands and premises described in **Schedule "A"** hereto (hereinafter called the "Lands"); and

WHEREAS the Lands are located within a development known as Peyto Place (hereinafter called the "Development"); and

WHEREAS the Corporation wishes to facilitate the availability of housing in the Town of Banff for individuals and families who are Bona Fide Residents;

WHEREAS the Corporation has identified that there is a local need for affordable housing which cannot reasonably be accommodated except by the Sublease contemplated herein; and

WHEREAS the current fair market value of the Lands as of the date of this Sublease is the sum set out in **Schedule "B"** to this agreement; and

WHEREAS this Sublease is granted for consideration below fair market value in order to assist in making residential Lands available at an affordable level; and

WHEREAS the Corporation is prepared to Sublease the Lands to the Sub-Lessee;

WHEREAS the Sub-Lessee wishes to acquire a Sublease interest in the Lands; and

WHEREAS this agreement is not a security for the payment of money; and

WHEREAS if this Sublease is disposed of by the Sub-Lessee, the Sub Lessee is restricted regarding such disposition by the terms of this agreement; and

WHEREAS upon disposition by the Sub-Lessee as provided for in this agreement, the maximum consideration the Sub-Lessee may receive from a purchaser of this sublease is the sum equal to the consideration paid by the Sub-Lessee as specified in Schedule "B" of this agreement, plus two percent per annum, compounded annually. There is no guarantee the Sub-Lessee will receive this sum, as future dispositions will be influenced by market demand.

NOW THEREFORE, in consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the Sub-Lessee to be paid, observed and preformed, the Corporation does demise and lease unto the Sub-Lessee, the Lands on the terms hereof.

## ARTICLE 1 - DEFINITIONS

1. In this lease:
  - a. "**Annual Fee**" means the yearly charge that may be payable under **Article 3** hereof;
  - b. "**Annum**" means the 365 day period commencing on the date of possession of the Lands by the Sub-Lessee and each such period thereafter;
  - c. "**Board**" means the Board of Directors of the Corporation;
  - d. "**Bona Fide Lending Institution**" means any chartered bank, insurance company, trust company, Alberta Treasury Branch or Credit Union carrying on the business of mortgage lending in the Province of Alberta that is an approved lender under the NATIONAL HOUSING ACT of Canada or a lender approved by the Corporation;
  - e. "**Bona Fide Resident**" means an individual who meets the Residency Requirements herein, as defined, and who meets the eligible resident requirements as defined in the National Parks Lease and Licence of Occupation Regulations (SOR/92-25), 1991 pursuant to the CANADA NATIONAL PARKS ACT;
  - f. "**Dependent Child**" means a person whose is a dependent as that term is defined in the Income Tax Act of Canada and whose primary residence is with the applicant and is in accordance with the National Parks of Canada Lease and Licence of Occupation Regulations (SOR/92-25);
  - g. "**Dwelling Unit**" means one or more rooms that are self-contained, intended for domestic use as a residence by one or more persons, and containing kitchen, living, sleeping and sanitary facilities.

- h. **“Fair Market Value”** means the appraised value determined by an appraisal completed by accredited appraisers, acceptable to the Corporation, and if more than one appraisal is obtained, means the average of the values determined by the appraisals;
- i. **"Head Lease"** means that lease relating to the Lands dated February 23, 2010, between Her Majesty the Queen in Right of Canada as Lessor and The Peter and Catharine Whyte Foundation as predecessor on title and the Corporation as Lessee by an Assignment of Lease dated April 29, 2010;
- j. **"Lands"** means the Lands and all fixed improvements thereon described in **Schedule "A"**;
- k. **"Manager"** means the individual appointed as Manager by the Corporation from time to time;
- l. **"Offer to Purchase"** means a bona fide Offer to Purchase the Lands compliant with Article 8(a)(iv) of this Sublease from a party dealing at arms length with the Sub-Lessee for the purchase of this Sublease interest in the Lands which the Sub-Lessee wishes to accept and includes an Offer to Sell which the Sub-Lessee makes to a person dealing at arms length with the Sub-Lessee;
- m. **"Park"** means Banff National Park of Canada;
- n. **"Primary Residence"** means the residence which is the place the Sub-Lessee ordinarily and continually occupies as his residence on a full time basis, as determined by the Corporation;
- o. **"Residency Requirements"** means:
  - i. an individual whose primary employment is in Banff National Park; or
  - ii. an individual who operates a business, except a home occupation, in Banff National Park and whose presence at the place of business is necessary for the day-to-day operation of the business; or
  - iii. a retired individual who resides in Banff National Park and who, for five (5) consecutive years immediately prior to retirement:
    - (1) was employed primarily in Banff National Park; or
    - (2) operated a business in Banff National Park and whose presence at the place of business was necessary for the day-to-day operation of the business; or
  - iv. a retired individual who resided in Banff National Park at the time of the individual's retirement and who resided in Banff National Park on **JULY 30TH, 1981**; or

- v. an individual who is a student in full-time attendance at an educational institution that is located within the Banff National Park and registered under the *Income Tax Act* or applicable provincial legislation relating to education; or
- vi. the spouse or a dependent of an individual referred to in any of **Clauses 1(o)(i) to 1(o)(v)** above.
- p. **"Single Parent"** means an adult person who is not living with another person as husband, wife or adult interdependent partner and with whom the children of the adult person make their primary residence;
- q. **"Sub-Lessee's Co-Habitants"** includes those individuals living on the Lands in a single domestic unit who are related by blood, marriage, adoption, common-law marriage, or foster parenthood to any of the individuals who execute this Sublease; and
- r. **"Townsite"** means the Townsite of Banff, as described in Plan 82414 in the Canada Lands Surveys Records at Ottawa, a copy of which is on file in the Land Titles Office for the South Alberta Land Registration District, Calgary, as Plan Number 9911462;

## **ARTICLE 2 - GRANT AND LENGTH OF TERM**

2.

- a. In consideration of the sum paid by the Sub-Lessee pursuant to **Article 3(a)** hereof and the covenants and agreements hereinafter reserved and contained on the part of the Sub-Lessee to be observed and performed, the Corporation does demise and lease the Lands unto the Sub-Lessee, for the purpose of use by the Sub-Lessee as a Primary Residence.
- b. The Sub-Lessee shall have and possess the Lands for and during the term commencing on \_\_\_\_\_, and ending on January 30, 2052, both days inclusive (hereinafter called the "Term").
- c. In the event of a replacement of the Head Lease by Her Majesty the Queen in Right of Canada and in the further event that the Sublease is in good standing at the time of such Head Lease replacement, this Sublease will be replaced for a term coincident with the term of such replacement of the Head Lease, less one day.
- d. Such replacement term shall commence upon the day after the expiry of the Term, or subsequent replacement term (if any) but no such replacement shall apply unless immediately prior to the time for the commencement thereof this Sublease and the Head Lease are both in full force and effect and the Sub-Lessee is not in default hereunder.
- e. The Sub-Lessee acknowledges and agrees that he has no right to renewal of the Sublease except the foregoing, and only such replacement rights as will be co-

extensive with actual replacements of the Head Lease (less the last day as aforesaid). The Sub-Lessee further acknowledges and accepts that the Corporation has no right to replace the Head Lease and that Sublease replacement is conditional upon Parks Canada granting a Head Lease replacement to the Corporation.

### ARTICLE 3 - CONSIDERATION

3.
  - a. The Sub-Lessee shall, in consideration of and for the grant of this Sublease, upon execution of this agreement, pay to the Corporation \_\_\_\_\_ percent of the Fair Market Value of the Lands, at the date of this Sublease, as specified in **Schedule "B"** hereto, which the Sub-Lessee accepts and agrees to be correct.
  - b. If required by the Corporation, the Sub-Lessee shall also pay during the Term of this Sublease to the Corporation, at the office of the Corporation, on or before SEPTEMBER 15<sup>th</sup> in each and every year of the Term, an Annual Administration Fee being an amount determined by the Corporation from time to time, having reference to the actual costs of administration to this development, not to exceed TWENTY-FIVE (25) CENTS per square foot of floor area, or \$250.00, whichever is greater. Floor area means the total floor area of the Unit subleased as described in the Condominium Plan for Peyto Place.
  - c. In the event that the Sub-Lessee fails to make the payment referred to in **Article 3(b)** herein when due, without limiting any remedies the Corporation may have for such default, the Sub-Lessee shall pay interest on such arrears at the rate per annum equal to the Bank of Canada prime rate of interest as announced from time to time, plus ONE (1%) PERCENT from the date any such amount is due until paid.

### ARTICLE 4 - USE OF THE LAND

4. The Sub-Lessee covenants and agrees to:
  - a. use the Lands for the sole purpose of the Primary Residence of the Sub-Lessee and shall occupy, use and maintain the Lands in accordance with the Town's by-laws and the following provisions:
    - i. any dwelling upon the Lands shall be continuously occupied as the Primary Residence of the Sub-Lessee, except that the unit may remain vacant for a maximum period of SIX (6) consecutive months in any TWELVE (12) MONTH period, or such longer time as the Corporation may authorize in writing, during the Term of this Sublease;
    - ii. the Sub-Lessee may sublet their interest in the Lands to a Bona Fide Resident subject to the conditions that the Sub-Lessee first obtains the prior written approval of the Corporation, which shall not be unreasonably withheld, and that the Lands remain the Primary Residence of the Sub-Lessee;

- iii. Sub-Lessee's Co-Habitants are permitted to co-habit the Lands with the Sub-Lessee, but the Sub-Lessee shall be responsible for all their acts and omissions as if they were the Sub-Lessee's own acts or omissions.
- iv. all occupants of the Lands shall be Bona Fide Residents.
- b. occupy, use, and maintain the Lands in accordance with all laws, regulations, rules, declarations and orders of the Government of Canada and resolutions and by-laws of the Town of Banff and of the Corporation and the By-laws of the Condominium Corporation being: The Owners: Condominium Plan No. 1011387;
- c. obtain all permits, licenses and authorizations required under the CANADA NATIONAL PARKS ACT and regulations made thereunder and any other applicable federal statutes and regulations thereto, all as may be amended, revised, consolidated or substituted from time to time;
- d. obtain all permits, licenses and authorizations required pursuant to the by-laws of the Town of Banff;
- e. comply with the provisions of the CANADA NATIONAL PARKS ACT and regulations made thereunder, both as may be amended, revised, consolidated or substituted from time to time, and all applicable Province of Alberta and Canada environmental protection laws, all federal and provincial laws, regulations, rules, orders, standards and guidelines that relate to the use of the land, including but without restricting the generality of the foregoing, all those concerned with the environmental assessment and protection;
- f. Not create or permit or knowingly allow any act or thing on the Lands which is a nuisance;
- g. Not to cause, permit or knowingly allow the commission of any waste of the Lands; and
- h. Keep and maintain the Lands and all improvements to the Lands in good and sufficient repair and condition at all times, including such decoration, redecoration, repair and maintenance as may be needed to keep them at all times in good repair and well maintained to the standards of prudent home owners.

#### **ARTICLE 5 - RESERVATION AND PRIOR RIGHT**

- 5.
  - a. The Sub-Lessee acknowledges and agrees that the rights herein contained are subject to all third party interests in the Lands existing at the date hereof on record with Her Majesty or Her franchisees. The Corporation shall notify the Sub-Lessee of such rights to the best of its knowledge and the Sub-Lessee hereby agrees to accept this Sublease subject to such other interests as may now exist.

- b. The Sub-Lessee covenants and agrees that the Manager or his agents **shall be** entitled to enter and inspect the Lands, all structures, fixtures, buildings and other improvements thereon at all reasonable times during the Term, for the purpose of verifying that the covenants and other provisions of this Sublease are being complied with.
- c. The Corporation hereby reserves unto itself, its officers, servants and agents the right to enter the Lands to take any necessary action on the Lands in order to protect the ecological integrity of the Park or to protect the flora or fauna from immediate threat or to protect human life.
- d. The Sub-Lessee understand and accepts that the Corporation may at any time hereafter make changes of any kind whatsoever to the Condominium of which the Lands subleased are a part and to the plan for such Condominium and the common property shown on the Condominium Plan, so long as such changes do not entail any material change to the location, size or interior improvements of the condominium unit itself that comprises the Lands subleased hereby. Without limiting the foregoing, the Sub-lessee acknowledges and agrees that the corporation may build and sublease, and consents to the Corporation building and subleasing, alone or in conjunction with other owners of units in Peyto Place, additional units upon the structure that is situate on the condominium parcel, amending the condominium plan, severing out and disposing of common property areas on, above or within the building known as Peyto Place, separating out and disposing of parts of such common property by strata space plan, amended condominium plan or such other means and methods as to the Corporation may in its sole discretion determine to allow for and develop and sublease additional residential condominium units on, in or above to Peyto Place building as it now stands (or may hereafter be). The Sub-Lessee will provide to the Corporation all such consents and approvals, and will secure from and provide to the Corporation all such consents and approvals of the Sub-Lessee's mortgagees and all other persons having or hereafter acquiring an interest in or charge upon the Lands subleased hereby, in such form and content as the Corporation may require. The Sub-Lessee hereby grants to the Corporation an irrevocable power of attorney to execute and deliver any and all consents and approvals as may be required hereunder by the Corporation for any of the above-described purposes.

#### **ARTICLE 6 - TAXES AND OTHER CHARGES**

- 6. The Sub-Lessee covenants and agrees to pay and discharge when due all rates, taxes, duties, utility charges, assessments, and other impositions whatsoever charged upon the Lands or upon the Sub-Lessee or occupier, or payable by either in respect of this Sublease and that these amounts shall constitute additional consideration hereunder and bear interest in accordance with **Article 3** hereof. The Sub-Lessee will also pay all condominium fees and levies and all reserve fund levies made or charged in or in respect of the Lands subleased.

## ARTICLE 7 - ACCEPTANCE OF THE LAND

7.
  - a. The Sub-Lessee hereby agrees to and does accept the Lands and all or any structures, fixtures, buildings, and other improvements thereon "as is" and confirms and agrees that there remain no obligations or liabilities or warranties whatsoever on the Corporation's part in respect of the Lands or any improvements thereon.
  - b. The Sub-Lessee agrees that at commencement and after the commencement of the Term, all maintenance, repairs, operation, capital improvements, and replacements carried out with respect to structures, fixtures, buildings and other improvements on the Lands and all expenses relating thereto shall be the responsibility of the Sub-Lessee solely.
  - c. The Sub-Lessee shall keep the Lands and all improvements thereon at all times both safe and habitable.
  - d. The Sub-Lessee agrees at all times to observe and perform, and cause its family members and invitees to observe and perform, the obligations of owners and occupants applicable to the Lands in and under the Bylaws of the Condominium Corporation for the condominium of which the Lands are part.

## ARTICLE 8 - ALIENATION

8.
  - a. The Sub-Lessee covenants and agrees that it, and upon the death of the Sub-Lessee, its personal representatives, shall not alienate, assign, mortgage, charge, convey, sell, transfer, license any occupation, part with the possession of or share the possession of the Lands, or any part thereof (hereinafter referred to as a "Sublease Disposition") unless:
    - i. he does so to a Bona Fide Resident of the Town dealing at arms length with the Sub-Lessee;
    - ii. he obtains the prior consent in writing of both the Corporation and the Minister of Canadian Heritage. The consent of the Corporation shall not be unreasonably withheld;
    - iii. the provisions of **Article 8(d)** hereof are met; and
    - iv. Any Offer to Purchase a Sublease Disposition or Offer by the Sub-Lessee to enter a Sublease Disposition shall be for a total consideration which does not exceed the sum equal to the consideration specified in Article 3(a) of this Agreement, plus a maximum of two percent per annum, compounded annually, not in advance, from the date of possession of the Lands by the Sub-Lessee.



- b. A Sub-Sublease made in accordance with and as permitted by **Article 4(a)(ii)** hereof, a mortgage to a Bona Fide Lending Institution pursuant to **Article 8(h) or (i)** hereof and a transfer to a surviving joint tenant shall not fall within the requirements of **Article 8(a)**.
- c. Notwithstanding **Article 8(a)** hereof, the Corporation may withhold its consent to any Sublease Disposition unless and until the Purchaser pays to the Corporation a fee applicable to a resale, in the amount determined by the Corporation, from time to time. At the date of the Sublease, the fee is \$2,500.00 plus GST.
- d. If the Sub-Lessee receives an Offer to Purchase a Sublease Disposition which the Sub-Lessee wishes to accept, or wishes to make an offer to enter a Sublease Disposition, then:
  - i. The Sub-Lessee shall deliver to the Corporation an executed copy of such offer and deposit cheque and a notice that the Sub-Lessee wishes to accept (or make) such offer; and
  - ii. The Corporation shall have and is hereby granted by the Sub-Lessee a right of first refusal to acquire the Sublease Disposition on the terms and at the price equal to the price set out in such offer by notice in writing of exercise of such right given to the Sub-Lessee within FIFTEEN (15) DAYS after the date of receipt of the said offer and notice from the Sub-Lessee;
  - iii. If the Corporation exercises its said right of first refusal, then the Sub-Lessee shall be deemed to have agreed to sell, transfer and assign to the Corporation the Sublease Disposition on the terms set out in the said offer. Upon such exercise, the Sub-Lessee and the Corporation shall complete the Sublease Disposition in accordance with the said offer;
  - iv. If the Corporation does not exercise its said right of first refusal, then the Sub-Lessee shall be free to accept (or make) the said offer to the Bona Fide Resident of the Town of Banff dealing at arm's length, in compliance with the provisions of **Article 8(a)(iv)** hereof, upon the terms disclosed to the Corporation, and to complete such Sublease Disposition. The Purchaser of a Sublease Disposition shall be bound by the provisions of the Sublease and specifically Article 8 of this Sublease;
  - v. If there shall be any changes made to the terms of any offer to purchase from those notified to the Corporation, the Corporation shall be notified of such changes and the time of exercise of the Corporation's right of first refusal shall not expire until THIRTY (30) days after the date of notification of the last changes;
  - vi. If the Corporation shall exercise its right of first refusal, the form and terms of the conveyances and other documents appropriate for the sale of the Sublease Disposition shall be determined by the Corporation;

- vii. If the Corporation does not elect to exercise the right of first refusal after receipt of a notice by the Sub-Lessee as set out in this clause and the Sub-Lessee does not complete the sale of the interest for sale upon the terms disclosed to the Corporation, the Corporation's right of first refusal shall continue in full force and effect for the term thereof and shall apply to any subsequent offer or sale of an interest for sale in respect to the said Lands;
  - viii. The conditions and restrictions relating to the right of first refusal herein granted shall be binding upon the Sub-Lessee, its successors and assigns and all persons claiming any interest therefrom;
  - ix. The Owner shall not make any Sublease Disposition in respect to the Lands save by bona fide arm's length transactions made in compliance with the purchase right hereby granted to the Corporation, and the requirements of **Article 8(a)(iv)**;
  - x. If the Corporation does not elect to exercise the right of first refusal and withholds its consent to any Sublease Disposition on reasonable grounds, then the Sub-Lessee shall not enter the Sublease Disposition, directly or indirectly or otherwise;
  - xi. The right of first refusal shall apply to each and every Sublease Disposition, whenever made and whether made by the Sub-Lessee named herein or any assignee, sub-lessee or successor thereof and whether or not there shall have been any consent to any prior Sublease Disposition; and
  - xii. The Corporation may make it a condition of any consent to any Sublease Disposition that the purchaser under the Sublease Disposition enter into an agreement with the Corporation undertaking to be bound by and observe the requirements hereof and the rights of the Corporation for first refusal all in form and content determined by the Corporation.
- e. During the term hereof, the Corporation and its agents and employees shall have the right to enter upon the said Lands, upon **seven days notice, as defined in the RESIDENTIAL TENANCIES ACT**, being given, and premises situate thereon for the purpose of making surveys, inspections and tests thereof.
- f. The Sub-Lessee shall provide to the Corporation and to the Minister, within TWENTY (20) DAYS from the date of issuance, an original, duplicate original or certified true copy of any encumbrance, discharge of encumbrance or court order relating to the land.
- g. The Corporation shall be entitled at any time to assign or transfer its interest in this Sublease without the consent of the Sub-Lessee. The Corporation shall also be entitled to make other such dispositions of the Lands or any part of them, including but not limited to the granting of easements and rights of ways, as it considers necessary or desirable without the consent of the Sub-Lessee so long as the rights granted do not materially adversely affect the rights of the Sub-Lessee pursuant to this Sublease.

- h. The Corporation covenants and agrees that the Sub-Lessee shall have the right at any time and from time to time to Mortgage or charge the Sublease estate created herein to a Bona Fide Lending Institution, dealing at arm's length, in any manner whatsoever including by way of assignment or Sublease for an amount not in excess of Ninety-Five (95%) Percent of the consideration paid to the Corporation as set out in **Article 3(a)** hereof, and to extend, modify renew or replace the Mortgage (while still observing the Ninety-Five (95%) Percent restriction), so long as the Mortgagee covenants and confirms in writing with the Corporation to be bound by the terms of the Sublease and specifically with the provisions applicable regarding sale, assignment or transfer of the Sublease.
- i. Mortgages to lenders other than Bona Fide Lending Institutions may be permitted with the Corporation's consent, which may be arbitrarily withheld, and subject to the lender confirming in writing with the Corporation to be bound by the terms of the Sublease and that any such Mortgage will not exceed NINETY-FIVE (95) Percent of the consideration referred to in **Article 3(a)** hereof.
- j. If, at any time of the occurrence of a default hereunder, the Sublease created hereby is subject to a Mortgage pursuant to **Article 8(h) or (i)** hereof, then provided that the Mortgagee thereunder has previously filed written notice of its mortgage with the Corporation together with an address for service, the Corporation shall, before taking any action to terminate or assign this Sublease by reason of such default, notify the Mortgagee in writing of the existence of the default, specifying the nature thereof. The Mortgagee shall have SIXTY (60) days after the date of such notice:

  - i. within which to cure the default; or
  - ii. if the default cannot reasonably be cured within that period, commence to cure such default.
- k. This Sublease shall not be forfeited or terminated because of such default as against a Mortgagee who cures or begins to cure, as aforesaid, and who, having begun to cure a default that cannot be remedied within SIXTY (60) days diligently continues to pursue the curing of the default. If the Mortgagee fails to so do, the Corporation may terminate this Sublease as herein provided without further notice to such Mortgagee. The interest of the Sub-Lessee may be terminated as against the Sub-Lessee, notwithstanding the foregoing undertaking in favour of the Mortgagee.
- l. If there exists any unpaid Mortgage against the leasehold estate of which the Corporation has notice pursuant to **Article 8(j)**, the Corporation agrees with the Mortgagee that the Corporation will not modify this lease, or accept a surrender of the Lands or a modification of this lease from the Sub-lessee prior to the end of the Term without the written consent of such Mortgagee provided, however, that nothing in this section shall affect the rights of the Corporation to terminate this Sublease, notwithstanding such Mortgage, as provided for in **Article 12**.

- m. The Sub-lessee's obligations regarding assignment, mortgage, Sub-Lease, and alienation apply to each and every assignment, mortgage, Sub-Lease, and alienation. No consent to a specific assignment, mortgage, Sub-Lease, or alienation abrogates the need for consent of the Corporation to each and any further Sub-Lease, assignment, mortgage, Sub-Lease, or alienation.

## **ARTICLE 9 - LIABILITY AND INDEMNITY**

- 9. The Sub-Lessee covenants and agrees that it:
  - a. shall not have or make any claim or demand against the Corporation and any of its officers, servants or agents for detriment, damage, accident or injury of any nature whatsoever or howsoever caused to the land or to any person or property thereon, except in the case of the negligence of the Corporation, its servants, employees and agents; and
  - b. shall at all times indemnify and save harmless the Corporation and any of its officers, servants or agents from and against all claims and demands, losses, costs, damages, actions, suits or other proceedings by whomsoever made, brought or prosecuted, in any manner based upon, occasioned by or attributable to the execution of this Sub-Lease, or any action taken or things done or maintained by virtue hereof or the exercise, in any manner, of rights arising hereunder.

## **ARTICLE 10 - INSURANCE**

- 10. The Sub-Lessee covenants and agrees that:
  - a. Throughout the Term of this Sub-Lease, it shall, at its sole expense, obtain and maintain personal liability insurance in such amounts and on such terms as the Corporation may from time to time require. Such insurance shall provide that the Sub-Lessee, the Corporation, and Her Majesty in Right of Canada, c/o Superintendent, Banff National Park as named insured, are indemnified against all legal liability arising from the death of or injury to any person on the land as well as the loss of or damage to any property thereon. Furthermore, the Sub-Lessee shall increase the amount of such insurance and obtain such increase in the amount of such insurance and obtain such additional coverage as the Corporation may from time to time require, based on the prevailing limits and coverage for the type of activity carried out on the land. Such insurance shall also provide that in the event of the death of or injury to any employee of one of the insureds named therein by an event for which the other insured named therein is or may be liable, such insurance shall indemnify the insured against whom the claim is made or may be made in the same manner as if separate policies had been issued to each insured named therein;
  - b. Obtain and maintain insurance on the improvements constructed upon the Lands, to a full replacement value without deduction for depreciation and such insurance shall provide and include normal coverage for fire and extended perils or all-risk coverage. Such insurance shall insure both the Corporation and the Sub-Lessee as named insureds;

- c. The insurance referred to in **Articles 10 (a) and (b)** shall provide for cross liability, that is to say, that the insurance shall indemnify each named insured in the same manner as though separate policies were issued in respect of any action brought against either of the named insureds by the other named insured;
- d. the insurance referred to in **Articles 10 (a) and (b)** shall be issued by an insurance company or companies which would be satisfactory to a prudent owner and shall provide for a minimum of THIRTY (30) days notice in writing by the insurance company to both the Sub-Lessee and to the Corporation of cancellation or amendment of such insurance;
- e. for each year during the Term of this Sub-Lease, the Sub-Lessee shall provide the Corporation with Certificates of Insurance or affidavits from the insurance company or companies confirming that the insurance referred to herein is in full force and effect; and
- f. The Sub-Lessee shall not do or omit to do or knowingly allow anything to be done or omitted to be done on the Lands which will in any way impair or invalidate the insurance required hereunder.

#### **ARTICLE 11 -DESTRUCTION AND RECONSTRUCTION**

- 11. If any structures, fixtures, buildings or other improvements on the Lands are damaged or destroyed by fire or any Act of God or other calamity, or by reason of any other occurrence, then the Sub-Lessee covenants and agrees that it shall complete the reconstruction of all such structures, fixtures, buildings or other improvements within ONE (1) year of the date of such damage or destruction. If such damage or destruction is restored and the Sub-Lessee is not in default hereunder, then the Corporation will permit proceeds of insurance to be applied on the costs of such restoration.

#### **ARTICLE 12 - DEFAULT AND TERMINATION**

- 12.
  - a. In the event that the Sub-Lessee fails to perform, observe or keep any of the covenants and other provisions herein contained, the Corporation may require the Sub-Lessee to remedy any such default within FIFTEEN (15) DAYS or such longer period of time as the Corporation may deem warranted. If in such case the Sub-Lessee does not remedy such default within the time prescribed by the Corporation, the Corporation may, by notice in writing and subject to any rights which have been extended to any security holder, by agreement in writing, terminate this Sub-Lease and on the day specified in the notice of termination, this Sub-Lease will terminate.
  - b. Notwithstanding anything herein contained, if the Sub-Lessee should at any time during the term hereof:
    - i. make an assignment for the benefit of creditors;
    - ii. be adjudged a bankrupt or insolvent;

- iii. file any petition or institute any proceedings under any bankruptcy or insolvency legislation seeking to effect reorganization or a composition;
- iv. be subject to the appointment of a receiver or trustee who is not discharged within SIXTY (60) DAYS from the date of such appointment; or
- v. breach any of the following provisions:
  - (1) cease to occupy the Lands on a continuous basis, as a Primary Residence,
  - (2) transfer, alienate, assign, charge, convey, mortgage, sell, subdivide, sub-lease, licence occupation or share possession of the Lands without the prior written consent of the Corporation or without meeting the requirements of **Article 8** hereof;

It will be lawful for the Corporation, without notice to the Sub-Lessee, but subject to any notice and to other rights which have been extended to any security holder, by agreement in writing, to declare the term ended and this Sub-Lease terminated and thereupon, these presents and everything herein contained and the estate or term will absolutely cease, terminate and be void without re-entry or any other act or any suit or legal proceedings to be brought or taken, provided the Corporation will nevertheless be entitled to recover from the Sub-Lessee, the rent then accrued or accruing.

- c. Termination of this Sub-Lease, pursuant to any of the provisions herein, shall be wholly without prejudice to the right of the Corporation to recover arrears of rent or any other right of action of the Corporation in respect of any antecedent breach of covenant, or other provision herein contained, and the rights herein shall survive the termination of this Sub-Lease, whether by act of the parties or by operation of law.
- d. In the event of default by the Sub-Lessee, the Corporation may re-enter and take possession of the Lands in the name of the whole as though the Sub-Lessee or the representatives of the Sub-Lessee or any other occupant of the Lands were holding over as tenants at will, and the said term shall at the option of the Corporation forthwith become forfeited and determined.
- e. In the event of termination of this Sub-Lease, the Sub-Lessee will be entitled to payment by the Corporation of an amount equal to the lesser of:
  - i. The consideration paid by the Sub-Lessee pursuant to Article 3(A), plus two percent per annum, compounded annually, not in advance, from the date of possession of the Lands, by the Sub-Lessee to the date of termination minus the amount of any indebtedness under this Sublease, all mortgages and other obligations charged upon the Lands; or

- ii. Eighty percent of the Fair Market Value of the Sublease at the date of termination, minus the amount of any indebtedness under this Sublease, all mortgages and other obligations charged upon the Lands.
- f. In the event of default by the Sub-Lessee, the Sub-Lessor may, in its sole discretion, recover as a debt from the Sub-Lessee, an amount equal to one (1%) percent per month for each month during which the default continues multiplied by the dollar value of the consideration paid by the Sub-Lessee for the Lands.

### **ARTICLE 13 - CORPORATION'S RIGHT TO PERFORM**

13.

- a. In the event of default by the Sub-Lessee in performance of any of its obligations hereunder, the Corporation, its servants, agents, employees and contractors, may enter upon the Lands, including the building, and remedy the default and the amount of any expenditures made by the Corporation in connection therewith shall be reimbursed to the Corporation by the Sub-Lessee on demand. The Corporation shall, however, be under no obligation to remedy any default of the Sub-Lessee, and shall not incur any liability to the Sub-Lessee for any act or omission in the course of its curing or attempting to cure any default.
- b. Prior to performing any of the Sub-Lessee's obligations under **Article 13(a)** hereof, the Corporation shall give notice to the Sub-Lessee specifying the default and requiring that the Sub-Lessee remedy such default within a reasonable time period under the circumstances. If the Sub-Lessee shall either not have remedied the default or be diligently pursuing such remedy at the expiration of such time period, the Corporation may, at its option without limiting any other remedy in this sub-lease available to the Corporation, exercise its rights under **Article 13(a)** above.
- c. The expenditures for all repairs made by the Corporation under **Article 13(a)** hereof and all expenses incurred thereunder shall constitute a debt payable by the Sub-Lessee to the Corporation, and such debt shall bear interest at the Bank of Canada Prime Rate until paid. The Corporation may collect such debt as rent by any lawful means.
- d. If it is necessary for the Corporation to retain the services of a solicitor or any other proper person for the purpose of assisting the Corporation in enforcing any of its rights hereunder in the event of default on the part of the Sub-Lessee, the Corporation shall be entitled to collect from the Sub-Lessee the expenditure for such services including all necessary court proceedings at trial or at appeal on a solicitor-and-client basis and such costs shall be payable as rent.

### **ARTICLE 14 -CONDITION OF THE LANDS UPON EXPIRATION OR PRIOR TERMINATION**

14.

- a. The Sub-Lessee covenants and agrees that upon the expiration or prior termination of this Sub-Lease it shall return the Lands and improvements to the

Corporation and leave the Lands, all structures, fixtures, buildings and other improvements thereon in good and substantial repair and condition.

- b. If the Sub-Lessee fails to remedy the condition of the Lands as required pursuant to **Article 14(a)** above, the Corporation may enter the Lands and remedy the condition of same and of all improvements thereon and charge the costs thereof to the Sub-Lessee, and such costs will constitute a debt due to the Corporation and shall be payable upon demand.

#### **ARTICLE 15 - OVER-HOLDING**

15. If the Sub-Lessee should hold over after the expiration of the Term hereof granted without any further written agreement, the Sub-Lessee shall be a trespasser, whether or not the Corporation fails or declines to take any steps to obtain vacant possession.

#### **ARTICLE 16 - DISPUTES**

16. Except as otherwise provided, in the event that any question or dispute arises between the parties hereto over any of the covenants or other provisions of this Sub-Lease or the interpretation thereof on its effect, which the parties are unable to resolve by agreement, the same shall be referred to the Court of Queen's Bench of Alberta for determination.

#### **ARTICLE 17 - BUILDERS' LIENS**

17.
  - a. The Sub-Lessee shall promptly pay or cause to be paid all contractors, subcontractors, suppliers and workers in connection with all work done on the demised premises, including the building, and the Sub-Lessee shall promptly discharge any builders' liens which may be filed against the title to the Lands and should the Sub-Lessee fail to do so, the Corporation may take such steps as may be necessary to discharge any builders' lien and the Corporation may charge all costs of doing so, including administrative and legal costs, to the Sub-Lessee, which costs shall be deemed to be additional rent under this Sub-Lease.
  - b. The Sub-Lessee shall at any time promptly, at the request of the Corporation and at the cost of the Sub-Lessee, post in at least TWO (2) conspicuous places on the Lands and on the building, a notice in writing stating that the Corporation shall not be responsible for the improvements. Such notice shall identify the Corporation by name and shall refer to the BUILDERS' LIEN ACT of Alberta, and amendment thereto. For the purposes only of this clause, the Corporation hereby authorizes the Sub-Lessee to place the notices required on the Lands and buildings.

#### **ARTICLE 18 - INTERPRETATION OF THE LEASE**

18.
  - a. The terms and conditions of this Sub-Lease are subject to the CANADA NATIONAL PARKS ACT and regulations made thereunder and any other



applicable federal statutes and regulations related thereto, all as may be amended, revised, consolidated or substituted from time to time.

- b. For greater certainty, in case of a conflict between the rights of the Sub-Lessee and the CANADA NATIONAL PARKS ACT and regulations made thereunder and any other applicable federal statutes and regulations related thereto, all as may be amended, revised, consolidated or substituted form time to time, the statute and regulations shall prevail.
- c. For greater certainty the interest granted under this Sub-Lease does not in any way exclude the application of the CANADA NATIONAL PARKS ACT and regulations made thereunder and any other applicable federal statutes and regulations related thereto, all as may be amended, revised, consolidated or substituted from time to time, unless explicitly waived in this Sub-Lease.
- d. The Sub-Lessee confirms and agrees that there are no representations, warranties, covenants or obligations of any kind on the Corporation's part other than those expressly herein set out.

#### **ARTICLE 19 - MISCELLANEOUS**

19.

- a. Any notice required by or affecting this Sub-Lease may be served upon the parties hereto by sending it by registered mail addressed to:

In the case of the Corporation:

BANFF HOUSING CORPORATION  
110 Bear Street  
P.O. Box 1260  
Banff, AB T1L 1A1

In the case of the Sub-Lessee:

P.O. Box  
Banff, Alberta T1L

and any notice addressed by registered mail to the Corporation or to the Sub-Lessee pursuant to this article will be deemed to have been effectively given on the SEVENTH (7TH) business day following the date of mailing. Such addresses may be changed from time to time by either party giving notice as provided herein.

In the event of any disruption of postal service, notices will be personally served upon the parties hereto by delivering the same to the attention of \_\_\_\_\_ in the case of service upon the Sub-Lessee, and to the President or to any Director in the case of service upon the Corporation.

- b. A waiver by either party hereto of the strict performance by the other of any covenant or other provision of this Sub-Lease shall be in writing, and will not of itself constitute a waiver of any subsequent breach of that covenant or provision of any other covenant or provisions thereof. The failure of the Corporation to require the fulfilment of any obligation of the Sub-Lessee, or to exercise any rights herein contained will not constitute a waiver or acquiescence or surrender of those obligations or rights.
- c. The parties hereto specifically covenant and agree that no partnership, joint venture or any agency relationship is created or intended to be created between the Corporation and the Sub-Lessee pursuant to this Sub-Lease.
- d. Time is of the essence of this Sub-Lease.
- e. No implied terms or obligations of any kind on behalf of the Corporation will arise from anything in this Sub-Lease or any improvements effected by the Sub-Lessee, and the express covenants and other provisions herein contained and made by the Corporation are the only covenants and provisions upon which any rights the Sub-Lessee are to be founded.
- f. The captions and headings throughout this Sub-Lease are inserted for the convenience of reference only and are not intended to describe, define or limit the scope, extent or intent of this Sub-Lease, or any provision thereof.
- g. Every provision herein contained will enure to the benefit of and be binding upon the Corporation, its successors and assigns and the Sub-Lessee, its successors and permitted assigns. When the context so requires or permits, the singular number will be read as if the plural were expressed, and the masculine gender as if the feminine or neuter, as the case may be, were expressed.
- h. As a condition precedent to the operation of this Sub-Lease, the Corporation shall obtain the consent and approval, in writing, of the Landlord of the Head Lease to this Sub-Lease.
- i. The Corporation agrees that if it receives notice of default under the Head Lease, it shall forthwith notify the Sub-Lessee and any Mortgagee described in **Article 8** hereof of the notice and the alleged default.
- j. All sums payable pursuant to this Sub-Lease and for which goods and services tax is to be paid shall be subject to a goods and services tax levy and shall be paid by the Sub-Lessee in addition to all other amounts payable hereunder.
- k. For and during the Term of this Sub-Lease, the Sub-Lessee agrees to be bound by and to perform all of the promises and agreements contained in the Head Lease and amendments thereof on the part of the Corporation excepting only that:
  - i. all sums payable as rent under the Head Lease shall be paid to the Corporation by the Sub-Lessee,

- ii. the Sub-Lessee shall not have any right or option to renew this Sub-Lease nor to compel the Corporation to renew the Head Lease,

and by virtue of the above, the terms of the Head Lease are incorporated in and shall form part of this Sub-Lease and be binding on the Sub-Lessee except as herein provided. In its capacity as sub-landlord, the Corporation shall, with respect to the Sub-Lessee, have all of those rights, powers, privileges and remedies which the Landlord has under the Head Lease and which are therein set forth.

**ARTICLE 20 - QUIET ENJOYMENT**

- 20. Subject always to the provisions of the Head Lease, and the performance of the provisions of this Sub-Lease and the Head Lease as hereinbefore incorporated in and made part hereof, the Corporation, so far as it is entitled and has the power to do such, hereby covenants with the Sub-Lessee for quiet enjoyment and to observe and perform all covenants and obligations on its part herein and pursuant to the Head Lease which, under the provisions of this Sub-Lease, are reserved unto the Corporation and not undertaken by the Sub-Lessee.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals and the corporate entities have set the hands of its proper officers under corporate seal, the day and year first written above.

BANFF HOUSING CORPORATION

Per: \_\_\_\_\_

Per: \_\_\_\_\_  
(corporate seal)

SIGNED, SEALED AND DELIVERED )  
in the presence of: )

\_\_\_\_\_)  
Witness: )

\_\_\_\_\_  
\_\_\_\_\_

**AFFIDAVIT OF EXECUTION**

C A N A D A ) I, \_\_\_\_\_,  
PROVINCE OF ALBERTA ) of \_\_\_\_\_, in the  
TO WIT: ) Province of Alberta,  
MAKE OATH AND SAY:

1. THAT I was personally present and did see \_\_\_\_\_ named in the annexed instrument, who is/are personally known to me to be the person(s) named therein, duly sign and execute the same for the purpose named therein.
2. THAT the same was executed at Banff, in the Province of Alberta, and that I am the subscribing witness thereto.
3. THAT I know the said \_\_\_\_\_ and he/she/each is in my belief of the full age of eighteen years.

SWORN BEFORE ME at )  
the Town of Banff, in )  
the Province of Alberta, ) \_\_\_\_\_  
this \_\_\_\_\_ day of )  
\_\_\_\_\_, 2010. )

\_\_\_\_\_  
A Commissioner For Oaths In And  
For The Province Of Alberta

**SCHEDULE "A"**  
LEGAL DESCRIPTION OF LANDS

FOR THE PROPERTY KNOWN AS:

LEGAL DESCRIPTION:

## **SCHEDULE "B"**

For the property known as: Unit:

the fair market value of the lands (land and house) is \$

Consideration payable to the Banff Housing Corporation for the Sublease of this property is  
percent of Fair Market Value of the Lands being \$ .