

THIS AGREEMENT dated as of the 29th day of July, 2005.

## Private and Confidential

BETWEEN:

**THE CORPORATION OF THE CITY OF WHITE ROCK,**

City Hall, 15322 Buena Vista Avenue,  
White Rock, British Columbia, V4B 1Y6

(the "City")

OF THE FIRST PART

AND:

**WHITE ROCK LAND CO. LTD.,** a British Columbia company, having an office at #168 15501 16<sup>th</sup> Avenue Street, Surrey, British Columbia, V4A 9M5, and **BUENA VISTA LAND CO. LTD.,** a British Columbia company, having an office at #1 12937 17<sup>th</sup> Avenue Street, Surrey, British Columbia, V4A 8T6

("1471/1475 Joint Owners")

OF THE SECOND PART

AND:

**MORROW-FALK FAMILY PHARMACY LTD.,** a British Columbia company, having an office at 1453 Johnston Road, White Rock, British Columbia, V4B 3Z4

("Morrow-Falk")

OF THE THIRD PART

WHEREAS:

A. The City is the owner of the following lands and premises (the "City Lands"):

Parcel Identifier: 008-600-813  
Lot 52 Section 10 Township 1 NWD Plan 39083

B. 1471/1475 Joint Owners are the owners of the following lands and premises (the "1471/1475 Lands"):

Parcel Identifier 011-452-579  
Lot 3 Except: Firstly: Part subdivided by Plan 27583; Secondly: Parcel "L" (Reference Plan 36117), Section 10, Township 1 New Westminster District Plan 9988; and

Parcel Identifier 008-916-713  
Lot 20 Except: Parcel "K" (Reference Plan 36117), Section 10, Township 1 New Westminster District Plan 27583

- C. Morrow-Falk is the owner of the following lands and premises (the "Morrow-Falk Lands"):

Parcel Identifier: 011-452-510  
Lot 2, Except Parcel "M" (Reference Plan 36117)  
Section 10, Township 1, NWD, Plan 9988;

- D. 1471/1475 Joint Owners and Morrow-Falk have sold their respective lands to Bosa Properties (OC) Inc. (in this Agreement, "Bosa" shall mean Bosa Properties (OC) Inc., and any successor of, or any subsidiary or affiliated company who is the assignee of, Bosa Properties (OC) Inc.) pursuant to certain purchase and sale agreements dated for reference March 15, 2005, for a price calculated on a weighted average FSR over the whole of the Bosa Development;
- E. The City has sold its lands to Bosa pursuant to a certain purchase and sale agreement dated for reference July 26, 2005, for a price calculated on the FSR yielded by the actual building area to be developed on the City Lands, minus the 7,800 square feet of Public Amenity Space being retained by the City under its agreement with Bosa, irrespective of density shifting among the lands comprising the development site;
- F. This may result in the City being paid:
- (1) more (if the FSR for the City Lands is greater than the weighted average FSR and building density is shifted onto the City lands away from the private lands), or
  - (2) less (if the FSR for the City Lands is less than the weighted average FSR and building density is shifted away from the City lands onto the private lands)

than is agreed to be the equitable apportionment of the aggregate overall price paid by Bosa to the City, 1471/1475 Joint Owners and Morrow-Falk as set out in this Agreement, requiring adjustment payments to be made among the parties as set out in this Agreement;

- G. Under its Agreement with Bosa, the price paid to the City for the City Lands is calculated on the basis of an FSR determined subtracting the 7,800 square feet of the Public Amenity Space from the building area to be developed on the City Lands as part of the Bosa Development, which must not affect 1471/1475 Joint Owners and Morrow-Falk on the equitable apportionment of the aggregate overall price paid by Bosa to the City, 1471/1475 Joint Owners and Morrow-Falk as set out in this Agreement;
- H. The parties wish to adjust the distribution of overall sale proceeds to account for the differences in the pre-existing buildings and improvements on their respective lands.

WITNESSES that in consideration of the mutual promises and covenants set forth herein, and for other good and valuable consideration paid by each of the parties to the other, receipt of which is hereby acknowledged, the parties covenant and agree as follows:

Allocation of Effective Aggregate Price Paid by Bosa

1. The parties agree that the **equalizing value** for the City Lands, the 1471/1475 Lands and the Morrow-Falk Lands totals \$9,150,000.00 allocated as follows:

a. the City Lands	\$5,466,000.00
b. the 1471/1475 Lands	\$2,234,000.00
c. the Morrow-Falk Lands	<u>\$1,450,000.00</u>
	<u>\$9,150,000.00</u>

2. The parties agree that the aggregate sale price received by them from Bosa over and above the **equalizing value** for the City Lands, the 1471/1475 Lands and the Morrow-Falk Lands of \$9,150,000.00, and after adjustment for the deemed receipt by the City of imputed sale proceeds for the 7,800 square feet of the Public Amenity Space, will be allocated as follows, based on the relative land areas of their properties:

a. the City Lands	62.03%
b. the 1471/1475 Lands	25.35%
c. the Morrow-Falk Lands	<u>12.62%</u>
	<u>100.00%</u>

3. The parties agree that the effective aggregate sale price (the "Effective Aggregate Price") received by them from Bosa for the purposes of the allocation of proceeds amongst them under this Agreement is computed as follows, using the Applicable FSR as defined and calculated under the purchase and sale agreements dated for reference March 15, 2005 which each of 1471/1475 Joint Owners and Morrow-Falk have with Bosa:

- a. Applicable FSR, MULTIPLIED BY
- b. combined square feet of site area of City Lands, 1471/1475 Lands and Morrow-Falk Lands, MULTIPLIED BY
- c. \$45.00 per sq. ft. of FSR

and that the effective aggregate excess (the "Effective Aggregate Excess") to be allocated by the percentages set out in Paragraph 2 above computed as follows:

- d. the Effective Aggregate Price, MINUS
- e. \$9,150,000.00

4. Accordingly, the parties agree that the agreed allocation of the Effective Aggregate Price yields each of them the effective allocated amounts (the "Effective Allocated Amounts"), as follows:

- a. Effective Allocated Amount for the City Lands:  
\$5,466,000.00 plus 62.03% of the Effective Aggregate Excess
- b. Effective Allocated Amount for the 1471/1475 Lands:  
\$2,234,000.00 plus 25.35% of the Effective Aggregate Excess

c. Effective Allocated Amount for the Morrow-Falk Lands:  
\$1,450,000.00 plus 12.62% of the Effective Aggregate Excess

5. If the Effective Allocated Amount for the City Lands is greater than the price received by the City under its agreement with Bosa PLUS the imputed sale proceeds for the 7,800 square feet of the Public Amenity Space of 7,800 square feet multiplied by \$45.00 per square foot, then the difference will be paid to the City by 1471/1475 Joint Owners and Morrow-Falk by the City out of the sale proceeds received by them from Bosa via cash payment plus assignment of a portion of the future repayment of the second mortgage take-back loan given to Bosa such that the cash payment and mortgage loan interest received by the City bear the same proportion to one another as the overall cash payment and second mortgage received by 1471/1475 Joint Owners and Morrow-Falk bear to one another.
6. If the Effective Allocated Amount for the City Lands is less than the price received by the City under its agreement with Bosa PLUS the imputed sale proceeds for the 7,800 square feet of the Public Amenity Space of 7,800 square feet multiplied by \$45.00 per square foot, then the difference will be paid to 1471/1475 Joint Owners and Morrow-Falk by the City out of the sale proceeds received by it from Bosa via cash payment plus assignment of a portion of the future repayment of the second mortgage take-back loan given to Bosa such that the cash payment and mortgage loan interest received by 1471/1475 Joint Owners and Morrow-Falk bear the same proportion to one another as the overall cash payment and second mortgage received by the City bear to one another.
7. *For example, if the density on the Private lands is greater than the density on the City lands as in the Bosa proposal revised as of December 2, 2004, then the aggregate sale proceeds paid by Bosa would be allocated as below:*

*Total density is  $283,701 + 7,800 = 291,501$   
 Total purchase price is  $291,501 \times \$45 = \$13,117,545$*

*The share of the equalizing value for each of the parties is:*

<i>-the 1471/1475 Lands</i>	<i>\$2,234,000</i>
<i>-the Morrow-Falk Lands</i>	<i>\$1,450,000</i>
<i>-the City Lands</i>	<i>\$5,466,000</i>

*Distribution of funds over the equalizing value is  $\$13,117,545 - 9,150,000 = \$3,967,545$*

<i>-the 1471/1475 Lands</i>	<i><math>\\$3,967,545 \times .2535 = \\$1,005,773</math></i>
<i>-the Morrow-Falk Lands</i>	<i><math>\\$3,967,545 \times .1262 = \\$ 500,704</math></i>
<i>-the City Lands</i>	<i><math>\\$3,967,545 \times .6203 = \\$2,461,068</math></i>

*Total proceeds to each party would be:*

-the 1471/1475 Lands	$\$2,234,000 + \$1,005,773 = \$3,239,773$
-the Morrow-Falk Lands	$\$1,450,000 + \$ 500,704 = \$1,950,704$
-the City Lands	$\$5,466,000 + \$2,461,068 = \$7,927,068$

*The amount of funds deferred to the second phase by the City will be \$7,927,068 – (161,424 sq. ft. + 7,800 sq. ft.) x \$45 per sq. ft. = \$311,988*

*The anticipated payment due to the City (\$311,988) from the sale of the private lands will be paid out cash on closing and balance from payout of second mortgage proportional with the cash on closing and proceeds from the second mortgage as for the private lands.*

8. If Bosa has made a single development permit application for all of the City Lands, the Morrow-Falk Lands, the 1471/1475 Lands and the Hillcrest Development (as defined in the 1471/1475 Joint Owners and Morrow-Falk purchase and sale agreements with Bosa), then the foregoing applies, HOWEVER:
  - a. If the current application before Council which includes the Hillcrest Mall is approved it is agreed that there will be a maximum density established under the respective 1471/1475 Joint Owners and Morrow-Falk purchase and sale agreements with Bosa on the combined City Lands, 1471/1475 Lands and the Morrow-Falk Lands of 4.21 {*Note: There is no reference to this cap in the City's purchase and sale agreement with Bosa, but it included in both the 1471/1475 Joint Owners and Morrow-Falk purchase and sale agreements with Bosa.*}
  - b. The City hereby acknowledges and agrees with said density cap of 4.21 on the combined City Lands, 1471/1475 Lands and the Morrow-Falk Lands for a development which includes the Hillcrest Mall.

### Contingency Clauses

#### 9. INTENTIONALLY DELETED.

10. If Bosa does not proceed with the purchase of the 1471/1475 Lands and the Morrow-Falk Lands it is understood that there will be no further funds due nor paid to the City from any future sale of the 1471/1475 Lands or the Morrow-Falk Lands, unless on any future sale of the 1471/1475 Lands and the Morrow-Falk Lands the price obtained by 1471/1475 Joint Owners and Morrow-Falk exceeds the minimum sale price as established by the City's **July 26, 2005** purchase and sale agreement with Bosa, namely, the minimum price payable to the City of \$7,420,106, which is the equivalent of an effective FSR density of 3.93 { [ ( 41,891 sq. ft. x 3.75 + 7,800 sq. ft. ) x \$45 per sq. ft. ] / 41,891 sq. ft. = 3.93 effective FSR }.

Accordingly the City would not receive any further funds from a subsequent sale of the 1471/1475 Lands and the Morrow-Falk Lands unless the sale price received exceeded \$4,852,800 (25,558 sq. ft. x 3.93 x \$45 per sq. ft.+ \$332,868). {*Note: this figure has been increased by \$332,868 to account for the greater improvements on the Morrow-Falk site*}

as originally established in our *equalizing values* (\$2,234,000/17,038 x 8,520 – \$1,450,000)}. Funds received in excess of said \$4,852,800 will be distributed proportionately to each party's interest as set out in Paragraph 2 above.

11. This Agreement, and the possibility of density and sale proceeds sharing as contemplated by this Agreement, will cease after 5 years from the date on which Bosa completes the purchase of the City Lands or the date 7 years from the date of rezoning of the City Lands, whichever is earlier.

**1471/1475 Joint Owners and Morrow-Falk Clauses**

1471/1475 Joint Owners and Morrow-Falk agree with one another as set out in the following Paragraphs 12, 13 and 14:

12. The original purchase and sale agreement offers from Bosa allocated the commercial space to be created on the 1471/1475 Lands (southern portion) to 1471/1475 Joint Owners and the Morrow-Falk Lands (northern portion) to Morrow-Falk. However, now that the Hillcrest Mall has been included in the overall development proposal Morrow-Falk deem it necessary for the operation of their existing pharmacy to locate on the southern portion. 1471/1475 Joint Owners agree to this exchange on the understanding that the difference in value is to be determined on appraised values and the difference paid to 1471/1475 Joint Owners. In the event that 1471/1475 Joint Owners and Morrow-Falk do not both accept such appraisals then they agree to a binding arbitration process by a single arbitrator pursuant to the *Commercial Arbitration Act*.
13. The purchase and sale agreements with Bosa set out that the commercial space to be created along Johnston Road is to be allocated 60% to 1471/1475 Joint Owners and 40% to Morrow-Falk, and that if the total commercial space along Johnston Road is less than 8,000 square feet, then the commercial space shall be split equally between 1471/1475 Joint Owners and Morrow-Falk. In the latter case, Morrow-Falk shall have the option to purchase from 1471/1475 Joint Owners additional commercial space (the "Additional Space") to bring the Morrow-Falk portion of such commercial space up to a maximum of 4,000 square feet for a purchase price equal to the fair market value of such Additional Space based on a per square foot price for such Additional Space as a part of such 4,000 square foot total commercial space, but in any event not less than the price payable to Bosa for such Additional Space; and thereupon, Morrow-Falk shall purchase from Bosa its original share of such commercial space as well as such Additional Space, and shall be entitled to a credit against the purchase price payable to 1471/1475 Joint Owners for the price paid to Bosa for such Additional Space, and shall indemnify and save harmless 1471/1475 joint Owners from and against any demands, claims, loss, damages, costs and liabilities resulting from any default of Morrow-Falk in closing on the purchase from Bosa of such Additional Space. Such option to purchase shall be exercised by delivery of notice in writing to 1471/1475 Joint Owners within 7 days of the deadline date for exercise of the Option regarding such commercial space under the respective contracts of purchase and sale with Bosa, and the completion date of the purchase and

sale will be on the same date as the completion of the purchase from Bosa of such commercial space. If Morrow-Falk and 1471/1475 Joint Owners fail to agree on the purchase price for such Additional Space which Morrow-Falk elects to purchase within 30 days of Morrow-Falk exercising the foregoing option to purchase, then the fair market value of such Additional Space shall be determined by a single accredited professional real estate appraiser pursuant to the *Commercial Arbitration Act* at the instance of either party, and the parties shall pay equal shares of cost of such arbitration appraisal, and the arbitrator shall take into account that the price payable to Bosa was intended to be a below market price and was not intended to reflect fair market value.

14. **INTENTIONALLY DELETED.**

**Cash Proceeds Election**

15. The distribution of sale proceeds set out above will be calculated based on a selling value of \$45 per buildable square foot. If any of the parties elect, pursuant to their respective purchase and sale agreement with Bosa, to proceed with an all cash sale at \$37 per buildable square foot, then such adjustment in selling value shall be solely out of their allocated sale proceeds determined as if all properties sold at \$45 per buildable square foot.

**General Provisions**

16. Each of the parties agree that immediately upon executing an agreement with Bosa for the sale of their lands they will deliver a copy of said agreement to the other two parties to this agreement. It being understood that each party has entered into said agreements with Bosa on the understanding that the terms and conditions of the ancillary agreement and this addendum are in full force and binding upon each party.
17. This Agreement contains the full agreement between the parties. There are no other terms and conditions, representations or understandings between the parties relating to the subject matter of this Agreement except those set forth in this Agreement.
18. This Agreement may be executed in any number of counterparts with the same effect as if all parties to this agreement had all signed the same document and all such counterparts shall be construed together and shall constitute one and the same agreement.
19. Any notice, demand, or other communication which may be required or permitted to be given to or served upon any party hereto shall be sufficiently given to or served upon any such party, if in writing, delivered to the party or mailed by prepaid registered post in the Province of British Columbia addressed to such party as set out at the beginning of this Agreement or at such other address in the Province of British Columbia of which such party may notify the other party in writing. Any notice properly mailed as aforesaid shall be deemed to have been received on the expiration of three business days after mailing and, if delivered, when delivered. Provided that if there is a disruption in mail service, any notice shall be deemed to be delivered only when actually received.

- 20. No amendment, modification, alteration, termination or waiver of or to any provision of this Agreement shall be binding on the parties hereto unless set out in writing signed by the parties hereto.
- 21. Where any party hereto comprises two or more persons, the promises, covenants, representations and warranties of such party hereunder shall be the joint and several obligations of each of such persons.
- 22. In this Agreement, words importing the singular, masculine or neuter gender shall be construed as meaning the plural, feminine, masculine or neuter gender, and vice versa, wherever the context or the parties so require.
- 23. This Agreement shall be binding upon, and shall enure to the benefit of the parties hereto and their respective successors and permitted assigns.
- 24. **The parties confirm the City is a public body as defined in the Freedom of Information and Protection of Privacy Act, RSBC 1996, c.165 (the "Act"). As such the City may be required to provide a copy of this agreement to a third party, subject to the limitations and exclusions of the Act.**

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the day and year first above written.

THE CORPORATION OF THE CITY OF  
WHITE ROCK by its authorized  
signatory(ies):

\_\_\_\_\_  
Title:

\_\_\_\_\_  
Title:

WHITE ROCK LAND CO. LTD. by its  
authorized signatory:

Florence J. Sully  
Title: *President*

MORROW-FALK FAMILY PHARMACY  
LTD. by its authorized signatory:

[Signature]  
Title: *Partner*

BUENA VISTA LAND CO. LTD. by its  
authorized signatory:

Carly Sully  
Title: *President*