

INDEBTEDNESS AGREEMENT

THIS AGREEMENT made as of the ____ day of ____, 2013.

BETWEEN:

Vancouver Island Regional Library, an entity incorporated under the laws of the Province of British Columbia and having its head office at Box 3333, 6250 Hammond Bay Road, Nanaimo, British Columbia

(hereinafter referred to as the "VIRL")

OF THE FIRST PART,

--and--

Regional District of Nanaimo , an entity incorporated under the laws of the Province of British Columbia and having its head office at 6300 Hammond Bay Road, Nanaimo, British Columbia.

(hereinafter referred to as "Regional District")

OF THE SECOND PART.

WHEREAS the VIRL has requested the Regional District to borrow, on VIRL's behalf, to a maximum sum of Nine Million Five Hundred Thousand (\$9,500,000.00) Dollars, for the purchase of 90 Commercial Street, Nanaimo, in the Province of British Columbia;

AND WHEREAS the VIRL desires to provide the Regional District with commitments with respect to obtaining such loan, and sufficient security and comfort for undertaking to secure the loan on behalf of the VIRL;

NOW THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of the respective covenants and agreements of the parties contained herein, the sum of one dollar paid by each party hereto to each other party hereto, and other good and valuable consideration, (the receipt and sufficiency of which is hereby acknowledged by each of the parties hereto), it is agreed as follows;

ARTICLE ONE – DEFINITIONS AND INTERPRETATION

1.1 Definitions. In this Agreement unless something in the subject matter or context is inconsistent therewith:

- a) **"Business Day"** means any day other than a Saturday or Sunday, or holiday, on which Canadian chartered banks are open for business in Nanaimo, British Columbia.
- b) **"Indebtedness"** means the obligations of the VIRL to the Regional District, as detailed in Article 2.2 of this Agreement;
- c) **"Loan"** means the amount that the Regional District will borrow from the MFA, which funds it will advance to the VIRL, to a maximum principal sum of Nine Million Five Hundred Thousand (\$9,500,000.00) Dollars, and interest thereon;

- d) **“Loan Agreement”** means the agreement between the MFA and the Regional District, which sets out the terms and conditions of the Loan;
- e) **“MFA”** means the Municipal Finance Authority of British Columbia;
- f) **“Mortgage”** means the mortgage to be granted by the VIRL in favour of the Regional District to be registered against the title to the property located at 90 Commercial Street, in the City of Nanaimo, in the Province of British Columbia.

ARTICLE TWO – THE LOAN AND INDEBTEDNESS

2.1 The Loan. The Regional District hereby agrees that, on the terms and subject to the conditions set forth herein, and the terms agreed to with the MFA, it will secure the Loan from the MFA for the benefit of the VIRL, and then advance the Loan to the VIRL, for the purchase of 90 Commercial Street, Nanaimo by the VIRL.

2.2 The indebtedness. The VIRL agrees to be liable to the Regional District for the aggregate of the following obligations:

- a) Payment of any and all obligations and liabilities owing by the Regional District to the MFA pursuant to the Loan Agreement and any other documents or security granted by the Regional District to the MFA pursuant thereto;
- b) Payment of any and all costs or outlays, of any nature whatsoever, incurred by the Regional District with respect to the negotiation, preparation, execution and delivery of the Loan Agreement and this Agreement, as well as all actions under the Loan Agreement and this Agreement; and
- c) The VIRL agrees to indemnify and hold the Regional District harmless from any costs, claims, outlays, expenses, and liabilities, of any nature whatsoever, that the Regional District may be responsible for, arising, directly or indirectly, out of this Agreement, or the negotiation, execution and delivery of the Loan Agreement, or the advancement of the Loan;

(all of which obligations, indebtedness and liabilities are herein collectively called the “Indebtedness”).

ARTICLE THREE – FORM OF THE MORTGAGE

3.1 Mortgage. Prior to the Regional District obtaining the Loan from the MFA, the VIRL shall secure the Indebtedness by granting the Mortgage, which shall be registered as a first financial charge over the property located at 90 Commercial Street, in the City of Nanaimo, in the Province of British Columbia, legally described as Air Space Parcel 1, Section 1, Nanaimo District, Air Space Plan VIP 65336.

ARTICLE FOUR – REPAYMENT OF THE INDEBTEDNESS

- 4.1 Repayment of the Loan.** The VIRL shall pay to the Regional District all principal amounts of the Loan, together with any interest or other amounts payable, all in accordance with the terms and conditions of the Loan Agreement. It is the intent of the VIRL, that it will share in the costs of the borrowing amongst all its members as per all its other normal operating budget costs. It is also the intent of the VIRL, to ensure full payment of the regular repayment amounts of the Loan due, prior to the payment due date set out in the Loan Agreement.
- 4.2 Prepayments and Early Payments.** The VIRL shall be entitled to prepay any of the outstanding principal amount of the Loan, subject to the terms and conditions of the Loan Agreement, provided the VIRL also pays whatever penalties or restrictions on repayment are set out therein. However, any gains calculated by MFA, such as the early repayment of MFA gains earned through the investment of proceeds, shall be for the benefit of VIRL.
- 4.3 Repayment of other indebtedness.** If there are any payments required to be made by the VIRL to the Regional District in addition to payments on the Loan, then the VIRL shall make such payments to the Regional District within (30) days of receipt of an invoice from the Regional District detailing such obligations of the VIRL.
- 4.4 Type and Place of Payment.** All payments by the VIRL, shall be made or delivered to the Regional District at the following address:
- 6300 Hammond Bay Rd., Nanaimo, BC V9T 6N2
Attention: Director of Finance

ARTICLE FIVE –CONDITIONS PRECEDENT

- 5.1** The obligations of the parties with respect to the consummation of any arrangements under this Agreement are subject to the waiver or fulfillment, in writing, of the following conditions precedent on the dates set out:
- a) The arrangement of the Loan Agreement between the Regional District and the MFA, on terms and conditions that are acceptable to the Regional District and the VIRL, in their sole respective discretions, on or before December 31, 2013, and
 - b) The agreement on the form and substance of the documents comprising the Mortgage, on terms and conditions acceptable to the Regional District and the VIRL, in their sole respective discretions, on or before December 31, 2013;

In the event that the foregoing conditions precedent are not waived or declared fulfilled, in writing by both parties, by the applicable dates set out above, then all obligations of the Regional District and the VIRL hereunder shall be null and void.

- 5.2** The obligations of the Regional District with respect to the consummation of any arrangements under this Agreement are subject to the waiver or fulfillment, in writing, of the following conditions precedent on the dates set out:

- a) The Regional District providing statutory notice of the intention to provide assistance by way of lending money under section 185 of the *Local Government Act*.
- b) The Regional District obtaining the necessary approval from its electors and from the supervising ministries of the Provincial Government, on terms and conditions that are acceptable to it in its sole discretion, on or before December 31, 2013; and
- c) The Regional District obtaining advance of the Loan from the MFA on or before December 31, 2013.

In the event that the foregoing conditions precedent are not waived or declared fulfilled, in writing by the Regional District, by the applicable dates set out above, then all obligations of the Regional District and the VIRL hereunder shall be null and void.

ARTICLE SIX – REPRESENTATIONS AND WARRANTIES

6.1 Representations and Warranties of the VIRL. To induce the Regional District to enter into this Agreement and to make the Loan, the VIRL makes the following representations and warranties which shall survive the execution and delivery of this Agreement and the Mortgage:

- a) neither the execution and delivery of this Agreement nor compliance with the terms, conditions and provisions hereof, will conflict with or result in a breach of any of the terms, conditions, or provisions of:
 - i. any agreement, instrument or arrangement to which the VIRL is now a party or by which it is or may be bound, or constitute a default thereunder;
 - ii. any judgment or order, writ, injunction or decree of any court; or
 - iii. any applicable law or government regulation.
- b) no action of, or filing with any governmental or public body or authority is required to authorize, or is otherwise required in connection with, the execution, delivery and performance of this Agreement by the VIRL.

ARTICLE SEVEN – MORTGAGE COVENANTS

7.1 Covenants of the VIRL. From the date of this agreement and thereafter until the indebtedness is paid in full:

- a) The VIRL will notify the Regional District immediately if the VIRL shall default in a material manner in the payment of any of its indebtedness for borrowed money, whether such indebtedness now exists or shall hereafter be created. The VIRL also shall notify the Regional District immediately if there shall occur a material event of default under any mortgage, indenture or instrument (including without limitation this Agreement) under which there may be incurred or evidenced, any indebtedness of the VIRL for borrowed money, whether such indebtedness now exists or shall hereafter be created;

- b) The VIRL will comply with the requirements of all applicable laws, rules, regulations and orders of any governmental authority, a breach of which would materially and adversely affect the financial condition or businesses of the VIRL, except where contested in good faith and by proper proceedings;
- c) The VIRL will promptly give the Regional District notice in writing of all litigation and all proceedings before any governmental or regulatory agencies or arbitration authorities affecting the VIRL, except those which, if adversely determined, would not have a material adverse effect on the financial condition or business of the VIRL; and
- d) The VIRL shall use all portions of the Loan advanced to it, solely for the purpose of purchasing 90 Commercial Street, Nanaimo, British Columbia.

ARTICLE EIGHT – GENERAL CONTRACT PROVISIONS

- 8.1 Notices.** All notices, requests, demands or other communications (collectively, “Notices”) by the terms hereof required or permitted to be given by one party to any other party, or to any other person shall be given in writing by personal delivery or by registered mail, postage prepaid, to such other party as follows:

To the VIRL at: Box 3333, 6250 Hammond Bay Rd.
 Nanaimo, BC V9R 5N3

To the Regional District at: 6300 Hammond Bay Rd, Nanaimo, BC V9T 6N2
 Attention: Director of Finance

or at such other address as may be given by such person to the other parties hereto in writing from time to time.

All such Notices shall be deemed to have been received when delivered, or, if mailed, 48 hours after 12:01 a.m. on the day following the day of the mailing thereof. If any Notice shall have been mailed and if regular mail service shall be interrupted by strikes or other irregularities, such Notice shall be deemed to have been received 48 hours after 12:01 a.m. on the day following the resumption of normal mail service, provided that during the period that regular mail service shall be interrupted all Notices shall be given by personal delivery.

- 8.2 Additional Considerations.** The parties shall sign such further and other documents, cause such meetings to be held, resolutions passed and bylaws enacted, exercise their vote and influence, do and perform and cause to be done and performed such further and other acts and things as may be necessary or desirable in order to give full effect to this Agreement and every part thereof, provided that nothing in this section is to be considered to be interpreted as fettering a legislative discretion of the Regional District.
- 8.3 Counterparts.** This Agreement may be executed in several counterparts, each of which when executed shall be deemed to be an original and such counterparts together shall be but one and the same instrument.

- 8.4 Time is of the Essence.** Time shall be of the essence of this Agreement and of every part hereof and no extension or variation of the Agreement shall operate as a waiver of this provision.
- 8.5 Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to all of the matters herein and its execution has not been induced by, no do any of the parties rely upon or regard as material, any representations or writings whatever not incorporated herein and made a part hereof and may not be amended or modified in any respect except by written instrument signed by the parties hereto.
- 8.6 Enurement.** This Agreement shall ensure to the benefit of and be binding upon the parties and their respective successors and assigns.
- 8.7 Currency.** Unless otherwise provided for herein, all monetary amounts referred to herein shall refer to the lawful money of Canada.
- 8.8 Headings for Convenience Only.** The division of this Agreement into articles and sections is for convenience of reference only and shall not affect the interpretation or construction of this Agreement.
- 8.9 Governing Law.** This agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia and the federal laws of Canada applicable therein and each of the parties hereto agrees irrevocably to conform to the exclusive jurisdiction of the Courts of such Province as located in Nanaimo, British Columbia.
- 8.10 Gender.** In this Agreement, words importing the singular number shall include the plural and vice versa, and words importing the use of any gender shall include the masculine, feminine, and neuter genders and the word "person" shall include an individual, a trust, a partnership, a body corporate, an association or other incorporated or unincorporated organization or entity.
- 8.11 Calculation of Time.** When calculating the period of time within which or following which any act is to be done or step taken pursuant to this Agreement, the date which is the reference date in calculating such period shall be excluded. If the last day of such period is not a Business Day, then the time period in question shall end on the first business day following such non-business day.
- 8.12 Legislation References.** Any references, in this Agreement to any law, by-law, rule, regulation, order or act of any government, governmental body or other regulatory body shall be construed as a reference thereto as amended or re-enacted from time to time or as a reference to any successor thereto.
- 8.13 Severability.** If any Article, Section or any portion of any Section of this Agreement is determined to be unenforceable or invalid for any reason whatsoever, that unenforceability or invalidity shall not affect the enforceability or validity of the remaining portions of this Agreement and such unenforceable or invalid Article, Section or portion thereof shall be severed from the remainder of this Agreement.

8.14 Transmission by Facsimile. The parties hereto agree that this Agreement may be transmitted by facsimile or such similar device and that the reproduction of signatures by facsimile or such similar device will be treated as binding as if originals and each party hereto undertakes to provide each and every other party hereto with a copy of the Agreement bearing original signatures forthwith upon demand.

IN WITNESS WHEREOF the parties have duly executed this Indebtedness Agreement
this ____ day of _____,

REGIONAL DISTRICT OF NANAIMO:

Per: _____
Chairperson

Per: _____
Corporate Officer

VANCOUVER ISLAND REGIONAL LIBRARY:

Per: _____
(Authorized Signing Officer)

Per: _____
(Authorized Signing Officer)