

**FIRST AMENDMENT TO THE DISCLOSURE STATEMENT**

(*Real Estate Development Marketing Act of British Columbia*)

**CHERRY CREEK VILLAS  
Bare Land Strata Lot Subdivision**

McBride Street  
Port Alberni, British Columbia

**Date: February 4, 2019**

**This First Amendment to the Disclosure Statement amends the Disclosure Statement dated March 9, 2018 and is with respect to an offering for sale by Cherry Creek G.P. Ltd. of the remaining 13 residential bare land strata lots located at the end of McBride Street, in the City of Port Alberni, in the Province of British Columbia.**

**DEVELOPER:**

**CHERRY CREEK G.P. LTD.**

Mailing address for the Developer in British Columbia:

3690 Nautilus Road,  
Nanoose, BC V9P 9H1  
**Attention: Murray Banting**

Address for service for the Developer in British Columbia:

3690 Nautilus Road,  
Nanoose, BC V9P 9H1  
**Attention: Murray Banting**

**REAL ESTATE AGENT OF THE DEVELOPER:**

**ReMax of Nanaimo**  
#1 - 5140 Metral Drive  
Nanaimo, BC V9T 2K8

**Attention: Bobby Toor**  
Tel: (250) 723-7653  
Cell: (250) 228-8667  
email: [bobby@bobbytoor.com](mailto:bobby@bobbytoor.com)

The Developer has determined to list one or more of the 13 unsold bare land strata lots in the Development with its real estate agent. The Developer reserves the right to market and offer for sale any of the other strata lots directly to the first purchaser thereof. None of the employees of the Developer are currently licensed under the *Real Estate Development Marketing Act* and, as such, are not able to act on behalf of any prospective purchaser of a strata lot in this development.

**“This First Amendment to the Disclosure Statement has been filed with the Superintendent of Real Estate, but neither the Superintendent, nor any other authority of the government of the Province of British Columbia, has determined the merits of any statement contained in the First Amendment to the Disclosure Statement, or whether the First Amendment to the Disclosure Statement contains a misrepresentation or otherwise fails to comply with the requirements of the *Real Estate Development Marketing Act*. It is the responsibility of the developer to disclose plainly all material facts, without misrepresentation.**

**This First Amendment to the Disclosure Statement relates to a development property that is not yet completed. Please refer to Section 7.2 for information on the purchase agreement. That information has been drawn to the attention of**

**\_\_\_\_\_ and \_\_\_\_\_, the purchaser(s) of Strata Lot \_\_\_, who has/have confirmed that fact by initialing the space provided here:**

**\_\_\_\_\_/\_\_\_\_\_.”**

**(initials)**

**In accordance with Section 15(3) of the *Real Estate Development Marketing Act*, and the *Electronic Transactions Act*, a developer may provide the Disclosure Statement and any Amendments thereto by electronic means but only with the written consent of the prospective purchaser.**

## **RIGHT OF RESCISSION**

**Under section 21 of the *Real Estate Development Marketing Act*, the purchaser or lessee of a Strata Lot may rescind (cancel) the contract of purchase and sale or contract to lease by serving written notice on the developer or the developer's brokerage, within 7 days after the later of the date the contract was entered into or the date the purchaser or lessee received a copy of this First Amendment to the Disclosure Statement.**

**A purchaser may serve a Notice of Rescission by delivering a signed copy of the Notice in person or by registered mail to**

- (a) the developer at the address shown in the disclosure statement received by the purchaser,**
- (b) the developer at the address shown in the purchaser's purchase agreement,**
- (c) the developer's brokerage, if any, at the address shown in the disclosure statement received by the purchaser, or**
- (d) the developer's brokerage, if any, at the address shown in the purchaser's purchase agreement.**

**The developer must promptly place purchasers' deposits with a brokerage, lawyer or notary public who must place the deposits in a trust account in a savings institution in British Columbia. If a purchaser rescinds their purchase agreement in accordance with the Act and regulations, the developer or the developer's trustee must promptly return the deposit to the purchaser.**

## **LIMITATION OF THE RIGHT OF RESCISSION**

The Right of Rescission information set out above ONLY applies to new purchasers who have not previously received the Disclosure Statement in respect of this development property.

Purchasers who have previously received the Disclosure Statement in respect of this development property accrued a right to rescission at that time and, pursuant to section 21(1)(b) of the *Real Estate Development Marketing Act*, DO NOT have a further right to rescind.

This notice does not affect any rights a purchaser may have under the purchase agreement or at common law.

## **EXECUTIVE SUMMARY**

### **Real Estate Policy Statement 16 Additional Disclosure to Assist Consumers**

The Superintendent has issued new Policy Statement 16 to assist purchasers in understanding new provisions of the *Real Estate Development Marketing Act* (the "Act") and the Real Estate Development Marketing Regulation (the "Regulation") that take effect on January 1, 2019 regarding assignments of strata purchase agreements. An assignment is the transfer of some or all of the rights, obligations and benefits under a purchase agreement made in respect of a strata lot in a development, whether that assignment is by a purchaser or is a subsequent transfer.

Beginning on January 1, 2019, Policy Statement 16 requires that disclosure statements, which developers are required to provide to purchasers of strata lots in stratified buildings, include additional content regarding assignments of strata purchase agreements.

#### **Disclosure if a Developer Allows Assignments**

If a developer that markets strata lots in a stratified building permits an assignment of a purchase agreement by a purchaser or subsequent assignee, Policy Statement 16 requires additional disclosure. The developer must include terms and a notice in its disclosure statement that explains what an assignment is, and that the developer must not consent to an assignment unless it first collects certain information and records from each proposed party to the assignment agreement. The terms and notice also inform purchasers that the developer is required to disclose the information and records the developer collects to the administrator under the Property Transfer Tax Act, and that the administrator may share that information for tax purposes or other purposes allowed under the Act.

A developer that permits assignments must attach a copy of its form of purchase agreement as an exhibit to its disclosure statement.

#### **Disclosure if a Developer does not Allow Assignments**

If a developer that markets strata lots in a stratified building does not permit an assignment of a purchase agreement, Policy Statement 16 requires that the developer disclose this in its disclosure statement.

A developer who does not permit assignments must attach a copy of its form of purchase agreement as an exhibit to its disclosure statement.

#### **Real Estate Agent of the Developer**

The Developer's real estate listing agreement with Royal LePage Port Alberni - Pacific Rim Realty has expired.

The Developer has determined to relist one or more of its bare land strata lots for sale with Bobby Toor, a realtor with ReMax of Nanaimo. The information regarding the real estate agent of the Developer contained on the cover page of this First Amendment to the Disclosure Statement has been revised accordingly.

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**EXHIBITS**

Exhibit 3.3 Design Guidelines

## **AMENDMENTS**

**The Disclosure Statement of the Developer dated March 9, 2019 is amended by this First Amendment as follows:**

1. The Developer's listing agreement with Royal LePage Port Alberni - Pacific Rim Realty has expired. The Developer has determined to list one or more of its bare land strata lots for sale with Bobby Toor of ReMax of Nanaimo. Accordingly, the cover page of the Disclosure Statement is amended as noted on the cover page of this First Amendment to the Disclosure Statement.

2. Subsection 2.1(5) titled "**Subdivision Plan**" is amended by adding the following paragraph:

"Bare land Strata Plan EPS4678 completed registration at the Victoria Land Title Office on June 27, 2018."

3. Subsection 2.3(4) titled "**Building Scheme**" is amended by adding the following paragraphs:

"The Statutory Building Scheme attached as **Exhibit 3.1** to the Disclosure Statement completed registration at the Victoria Land Title Office on June 27, 2018 under assigned document number CA6856245.

The Developer has recently changed a number of design guidelines. A copy of the current Design Guidelines are attached hereto as **Exhibit 3.3**. All references in the Disclosure Statement to **Exhibit 3.2** is to be changed to **Exhibit 3.3**."

4. Section 3.1 titled "**Unit Entitlement**" is amended by adding the following paragraph:

"The Schedule of Unit Entitlement attached as **Exhibit 5.2** to the Disclosure Statement completed registration at the Victoria Land Title Office on June 27, 2018 under assigned document number CA6856242".

5. Subsection 3.5(1) titled "**Bylaws**" is amended by adding the following paragraph:

"The Owner Developer's Notice of Different Bylaws attached as **Exhibit 4.2** to the Disclosure Statement completed registration at the Victoria Land Title Office on June 27, 2018 under assigned document number CA6856244."

**SIGNATURES**

**Deemed Reliance**

Section 22 of the *Real Estate Development Marketing Act* provides that every purchaser who is entitled to receive this Disclosure Statement is deemed to have relied on any false or misleading statement of a material fact contained in this Disclosure Statement, if any, and any omission to state a material fact. The developer, its directors and any person who has signed or authorized the filing of this Disclosure Statement are liable to compensate the purchaser for any misrepresentation, subject to any defences available under section 22 of the Act.


**Declaration**

The foregoing statements disclose, without misrepresentation, all material facts relating to the Development referred to above, as required by the *Real Estate Development Marketing Act* of British Columbia, as of February 4, 2019.

**CHERRY CREEK G.P. LTD.**

by its authorized signatory:

  
\_\_\_\_\_  
**MURRAY BANTING, President**

  
\_\_\_\_\_  
Witness  
DEBBIE BANTING  
3690 NAUTILUS RD.  
NANAISSO Bay, BC.  
V9P 9H1

**DIRECTOR:**  
  
\_\_\_\_\_  
**MURRAY BANTING**

# CHERRY CREEK VILLAS

## DESIGN GUIDELINES

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These Design Guidelines have been prepared by Cherry Creek G.P. Ltd. (the “Developer”) and may be amended from time to time by the Developer in its sole discretion.

The title to each of Strata Lots 1 to 14 in Plan EPS4678 are charged by a Statutory Building Scheme.

Section 2 of the Building Scheme states that no work shall be commenced on Lot without having first received the Approval of the Developer or the Design Approval Officer authorizing the proposed Work on the Lot as provided for in these Design Guidelines.

### A. STATEMENT OF INTENT

It is the intention of the Developer that all Dwellings, other Buildings and all other improvements to a Lot, including fencing and landscaping, are to be controlled as to design, siting, height, setbacks, types of exterior finishing materials and exterior colour schemes. For greater certainty, it is the intention of the Developer to ensure a compatible variety in Dwelling types to be built on the Lots and to ensure that a Dwelling, other Buildings and all other improvements are suited to the particular Lot on which they are to be located.

### B. APPLICATION FOR APPROVAL

Each Owner of a Lot is responsible for obtaining the written approval of the Design Approval Officer authorizing any proposed Work on the Owner’s Lot prior to making application to the City of Port Alberni for a Building Permit and prior to commencing any such Work on the Lot, as provided for in the Building Scheme and in these Design Guidelines.

An Owner of a Lot **shall not** make application for a Building Permit to the City of Port Alberni and **shall not** commence any Work on the Owner’s Lot including, site preparation, clearing, burning, excavation, filling, backfilling, grading or leveling or any construction-related activities or any alteration, addition or extension to a Dwelling, any other Building or any other improvement on a Lot unless and until the Owner has made application for approval of the Work to the Developer and has received written approval for the Work from the Design Approval Officer.

Should an Owner make application for a Building Permit and/or commence any Work on the Owner’s Lot without having first received approval for the Work from the Design Approval Officer, the Design Approval Officer may deliver written

**notice to the Owner to stop any such Work until the Owner has received the required written approval for the Work from the Design Approval Officer.**

**In this event, should the Owner fail to stop the Work in a timely manner following delivery of such written notice, the Developer may make application to the British Columbia Supreme Court for an injunction ordering the Owner to stop the Work pending receipt of the required written approval for the Work from the Design Approval Officer.**

**In this event, the Owner will be responsible for paying the Developer all of its costs, charges and expenses incurred in obtaining and enforcing any such Order and the provisions of these Design Guidelines, including all legal fees incurred by the Developer on a solicitor and own client basis.**

Application for Approval of any Work shall be made by an Owner of a Lot to the Design Approval Officer of the Developer, **Murray Banting**, in writing and delivered to 3690 Nautilus Road, Nanoose Bay, British Columbia, V9P 9H1 or to such other person and/or address as may be designated by the Developer from time to time.

**This application must include the following:**

1. A completed **Application Form** (see Schedule A attached hereto);
2. A refundable security deposit payable to the Developer in the sum of \$2,000.00, or such other sum as determined by the Developer, to assure full compliance by the Applicant of the Work approved by the Design Approval Officer and further to ensure that any damage to the adjacent roadway, sidewalks, curbs, boulevard landscaping, street lights or otherwise has been fully repaired to the satisfaction of the Design Approval Officer;
3. A further refundable security deposit payable to the Developer in the sum of \$2,000.00, or such other sum as determined by the Developer, to assure full compliance by the Applicant of any Landscaping Work approved by the Design Approval Officer; and
4. **Two (2) complete sets** of the following, each duly executed by the Owner:
  - (a) construction plans for the Dwelling, any other Building or any other Improvements to be constructed on the Lot, including any proposed fencing, screening and/or retaining walls;
  - (b) a plot plan of the Lot illustrating the proposed location of the Dwelling, any other Building or any other Improvement to be constructed on the Lot,



including the setback distances between the front, rear and side Lot lines and any such Dwelling, Building or Improvement;

- (c) elevation plans illustrating the front, side and rear elevations of the Dwelling, any other Building or any other Improvement to be constructed on the Lot, including the height of any such structure from grade level from the front, rear and side elevations of any such structure;

**NOTE - The grade of a Lot on the date of purchase of the Lot by the Owner shall not be altered without the prior written approval of the Design Approval Officer. Any change in the grade of the Lot may require the Owner to install concrete retaining walls or other means of retention as determined by the Design Approval Officer.**

- (d) a plan illustrating all existing trees to be removed or altered in order to accommodate construction on the Lot;
- (e) a landscaping plan illustrating the size, species and location of all proposed planting materials, fences and other landscape features.;
- (f) a complete list of building materials and colour schemes for the Dwelling, any other Building or any other Improvement proposed to be constructed on the Lot; and
- (g) Written confirmation that each Dwelling constructed on a Strata Lot must include not less than three (3) natural gas appliances.

Two of these three natural gas appliances must include a natural gas furnace and a natural gas hot water tank or hot water supply on demand system.

The third natural gas appliance can be for a fireplace, stove, clothes dryer or an external connection for operating a barbeque, outdoor heater or otherwise.

(hereinafter collectively called the "**Building Plans**").

### C. APPROVAL PROCESS

A letter of Approval or a letter outlining modifications to be made to the Building Plans shall be issued by the Design Approval Officer to an Owner within **fourteen (14) calendar days** after receipt of the Building Plans of an Owner. One (1) complete set of Building Plans will be returned to the Owner with the Letter of Approval or with the letter requesting modifications, illustrating any modifications that may be required by the Design Approval Officer. The remaining set of Building Plans will be retained by the Design Approval Officer as a record of compliance.

The Design Approval Officer shall be deemed to have approved the Building Plans of the Owner if the Design Approval Officer has not, within **twenty-one (21) calendar days**, after the date of receipt of the Building Plans of an Owner, either requested additional specifications, plans or other material or has delivered a letter of rejection to the Owner, with reasons in writing.

If the Design Approval Officer requires additional specifications, plans, materials or otherwise and this information has been delivered by the Owner to the Design Approval Officer then, if the Design Approval Officer does not either approve the Building Plans, including such additional specifications, plans or material, or refuses Approval thereof with reasons in writing, within **fourteen (14) calendar days** after the date of receipt of such additional specifications, plans and material, then the Design Approval Officer shall be deemed to have approved the Building Plans including such additional specifications, plans and material.

Approval by the Design Approval Officer of the Building Plans of an Owner shall expire **six (6) months** from the date of such Approval unless in the meantime the Owner has received a building permit and has commenced construction of the Work authorized by the Approval of the Design Approval Officer for the Lot and authorized by the building permit.

Refusal or failure by the Design Approval Officer to give such Approval shall not be actionable by an Owner under any circumstances, it being within the sole discretion of the Design Approval Officer to give or withhold such Approval.

Any rejection of a request for Approval and any Approval being granted herein or, in the Building Scheme, shall be final and binding and shall not be open to question by an Owner of any Lot, and failure of the Design Approval Officer to enforce this approval process or to exercise its power in a judicial manner shall not render it liable in damages or to any claims or demands whatsoever.

Any consent or Approval required herein or in the Building Scheme, shall be given by the Design Approval Officer in writing and the Design Approval Officer may in his sole

discretion, relax, waive, modify or exempt any of the provisions herein for any Lot remaining undisposed of by the Developer at the time the subject relaxation, waiver, modification or exemption takes effect.

#### **D. DESIGN GUIDELINES**

The Developer and the Design Approval Office have determined that the following Design Guidelines are required in all Building Plans:

No Owner, or anyone acting on behalf of an Owner, shall place, construct, erect or maintain on a Strata Lot:

- (1) a Dwelling having a roof finish other than:
  - (a) "Standing Seam Metal roofing" such as WESTFORM Metal Prolok 12" and 16" with Concealed Fastening System"; and
  - (b) any other roof finish approved by the Developer or the Design Approval Officer.
- (2) a carport;
- (3) a Dwelling having a garage with a minimum width of less than **twenty (20) feet**, unless as approved for side entrance garages by the developer or approval officer.
- (4) a driveway fronting the garage having a minimum width of less than **eighteen (18) feet**;
- (5) a driveway having a finished surface other than broom finished concrete, exposed aggregate concrete, interlocking paving bricks or a combination thereof or any other finished surface as may be approved by the Design Approval Officer or the Developer;
- (6) a driveway that will accommodate the parking of less than **two (2)** motor vehicles;
- (7) a Dwelling or any other Building having an exterior finish, save and except for facia and trim, other than:
  - (a) hardboard (hardi-plank, Hardi Board or other Hardi Product);
  - (b) wood siding;
  - (c) wood shakes;
  - (d) wood shingles;
  - (e) board and batten wood siding;
  - (f) brick;

- (g) natural rock or stone;
- (h) cultured stone; or
- (i) any other exterior finishes as may be approved by the Design Approval Officer or the Developer,

together with one or more of the following exterior accent materials:

- (a) brick;
- (b) natural rock or stone;
- (c) cultured stone;
- (d) acrylic stucco in a smooth sand float finish;
- (e) wood shingles;
- (f) wood shakes;
- (g) composite or other approved materials; or
- (h) metal such as corrugated Galvalume.

**PROVIDED ALWAYS THAT** any wood materials utilized as either a main or accent exterior material shall be painted or stained a matching or complementing colour to all other materials;

- (8) a retaining wall having an exposed height greater than four (4) feet;
- (9) any exposed concrete, including retaining walls, having a height greater than two (2) feet that does not have an exposed aggregate finish; and
- (10) any exposed concrete foundation walls higher than two (2) feet unless finished with parging or other approved surfacing.
- (11), A fence other than as approved in design, size, color and location by the developer or approval officer.

**CHERRY CREEK VILLAS**

**Application for Approval of Building Plans**

**Design Approval Officer  
for the Developer:  
Murray Banting  
3690 Nautilus Road  
Nanoose, BC V9P 9H1**

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*To be completed by Applicant:*

Date of Application: \_\_\_\_\_  
Lot # \_\_\_\_\_ Civic Address: \_\_\_\_\_  
Owner's Name: \_\_\_\_\_  
Owner's Address: \_\_\_\_\_  
  
Owner's Phone: \_\_\_\_\_  
Builder's Name: \_\_\_\_\_  
Builder's Address: \_\_\_\_\_  
Builder's Phone: \_\_\_\_\_  
Builder's Email: \_\_\_\_\_  
General House Description: \_\_\_\_\_  
Square footage: Main \_\_\_\_\_ Second \_\_\_\_\_ Basement \_\_\_\_\_  
Total \_\_\_\_\_  
Exterior Finish Materials and Colour: \_\_\_\_\_  
Trim Materials and Colour: \_\_\_\_\_  
Roof Material and Colour: \_\_\_\_\_  
Driveway Materials: \_\_\_\_\_  
Estimated Date of Commencement of Construction: \_\_\_\_\_  
Estimated Date of Completion of Construction: \_\_\_\_\_