

## DEED OF HYPOTHEC

Minute No.:

On this • ( • ) day of • Two Thousand and •  
(20 • )

Before Mtre • , the undersigned Notary for the Province of Quebec practicing in the City of •

APPEARED:

(hereinafter referred to as the "**Homeowner**")

AND:

**CANADA MORTGAGE AND HOUSING CORPORATION**, a legal person duly incorporated under the *Canada Mortgage and Housing Corporation Act* (R.S.C. (1985), c. C-7), having its head office at 700, Montréal Road, City of Ottawa, Province of Ontario, K1A 0P7, represented by • , its duly authorized representative pursuant to a power of attorney executed under private signature on • , a copy of which remains annexed hereto after having been acknowledged as true and signed for identification by said representative in the presence of the undersigned notary;

(hereinafter referred to as "**CMHC**")

Notice of address registered in the Land Register of Québec under number 6 161 787.

### WHO HAVE AGREED AS FOLLOWS:

WHEREAS CMHC and the Homeowner executed on • an Agreement for a Shared Equity Mortgage and Borrowing Disclosure Statement under which CMHC, as program administrator (as hereinafter defined) agreed to advance the Incentive (as hereinafter defined) to the Homeowner which shall be applied to the purchase price of the property (as hereinafter defined) and which the Homeowner agrees to reimburse CMHC with the Shared Equity Amount (as hereinafter defined). This Agreement and all additional deeds, amendments, renewals, substitutions and replacements in connection with this Agreement are hereinafter collectively defined as the "**Shared Equity Mortgage Agreement**". A copy of this Shared Equity Mortgage Agreement remains attached to this Deed after having been acknowledged as true and signed for identification by the representatives of the parties with and in the presence of the undersigned notary.

WHEREAS the Homeowner agrees to hypothecate the property (as hereinafter defined) to secure the payment and performance of the Incentive, the Shared Equity Amount, the additional costs, if any (each as defined below) and all other Homeowner's current and future obligations in favour of CMHC from all agreements executed by the Homeowner and related to the Shared Equity Mortgage Agreement (hereinafter collectively defined as the "**Indebtedness**").

## 1. HYPOTHEC

To secure the payment and performance of the Indebtedness, the Homeowner hypothecates, in favour of CMHC, as at the date hereof, the following properties to the extent of the following amount: “ • ” dollars (\$“ • ”) in lawful money of Canada.

- A. The property(properties) described in Section I of the Schedule attached hereto;
- B. All tangible and intangible assets which, with respect to Property, are subject to any of Sections 901 to 904 of the *Civil Code of Québec* (including all current or future undertakings and constructions of a permanent nature, appurtenances, accessions and appurtenant structures), and all current and future movable assets which are incorporated, lose their individuality and ensure the utility of the Property, as well as the equipment ensuring the utility of the Property and remaining materially and permanently attached to or connected with the Property, without losing its individuality and without being incorporated therein; and
- C. all current and future indemnities paid or to be paid under the insurance contracts covering properties mentioned in Paragraphs A and B above.

In this Deed, the term “**Property**” collectively means the property described or indicated in Paragraphs A, B and C above.

## 2. ADDITIONAL HYPOTHEC

The Homeowner hypothecates the Property in favour of CMHC for an additional amount equal to twenty percent (20%) of the principal hypothec referred to in Section 1 of this Deed in order to secure the Indebtedness, which is not secured by the principal hypothec.

## 3. INTERPRETATION

- A. In this set of terms
  - (i) “**Additional Costs**” means any other amount that may be added to the Incentive under the terms of the Shared Equity Mortgage Agreement or this Deed, including the costs of registering a discharge of this Deed from title to the Property;
  - (ii) “**Approved Lender**” means a lender approved by the mortgage loan insurer under the NHA;
  - (iii) “**Business Day**” means a day other than a public holiday, a Saturday or a Sunday, and where a time limit under these Mortgage Terms expires on a day that is not a Business Day, that time limit shall be deemed to extend until the next day that is a Business Day;

- (iv) “**First Insured Lender**” means the Approved Lender in favour of whom the First Insured Mortgage is granted;
- (v) “**First Insured Mortgage**” means the mortgage or charge insured pursuant to the NHA or PRMHIA and registered in priority to this mortgage or charge on title to the Property, in an amount not to exceed the amount provided in the Shared Equity Mortgage Agreement;
- (vi) “**Incentive**” means the amount advanced by CMHC to the Homeowner under the Program and as set out in the Shared Equity Mortgage Agreement;
- (vii) “**Market Value**” means, at the sole discretion of CMHC:
  - (a) the selling price of the Property set out in an agreement of purchase and sale between the Homeowner and a third party who is at arm’s length to the Homeowner within the meaning of the *Income Tax Act*; or
  - (b) the market value of the Property as determined by CMHC (i.e. by way of an independent appraisal). For certainty, improvements made to the Property during the term of the Shared Equity Mortgage Agreement will be included when determining the “Market Value”;
- (viii) “**Mortgage Terms**” means these terms;
- (ix) “**NHA**” means the *National Housing Act*, R.S.C., 1985, c. N-11, together with its associated regulations, as the same may be amended, replaced or extended from time to time;
- (x) “**Original Home Value**” means the lesser of the purchase price of the Property, and the fair market value of the Property, as determined by the mortgage loan insurer. If improvements will be made to the Property immediately after the purchase, then the value of those improvements will be included when determining the “Original Home Value”;
- (xi) “**PRMHIA**” means the *Protection of Residential Mortgage or Hypothecary Insurance Act*, (S.C. 2011, C. 15), together with its associated regulations, as the same may be amended, replaced or extended from time to time;
- (xii) “**Program**” means the first-time home buyer incentive program established by CMHC in accordance with section 57 of the NHA on behalf of the Government of Canada to help a first-time home buyer with the purchase of a home;
- (xiii) “**Property**” means the property described in Section I hereof. If the property is a condominium unit or strata lot, then the Property includes the Homeowner’s interest in the common elements and

any other interest that the Homeowner may have in the assets of the divided co-ownership. Any references to the Property means all or any part of the Property;

- (xiv) **"Share"** means:
- (a) where the Property is a resale property, five percent (5%);  
or
  - (b) where the Property is a new construction property, five percent (5%) or ten percent (10%), as indicated in the Shared Equity Mortgage Agreement.
- (xv) **"Shared Equity Amount"** means CMHC's share of the difference in (a) the Market Value of the Property on the time of repayment, and (b) the Original Home Value. CMHC's share will depend on the original Share of the purchase price advanced to the Homeowner (i.e. the Share will be 5% if the Incentive was based on 5% of the Original Home Value at the date of advance, or the Share will be 10% if the Incentive was based on 10% of the Original Home Value at the date of advance).

By way of example:

- (a) **Resale property or new construction property where the approved Share is 5%:**

- (1) **Increase:** if the Original Home Value is \$400,000, the Incentive advanced by CMHC is \$20,000 and the Market Value at the time of repayment is \$480,000, the Shared Equity Amount would be:

$$(\$480,000 - \$400,000) \times 5\% = \$4,000$$

As such, the Homeowner repays the Incentive of \$20,000 **TOGETHER WITH** the Shared Equity Amount of \$4,000 for a total of \$24,000 **PLUS** the Additional Costs (if any).

- (2) **Decrease:** if the Original Home Value is \$400,000, the Incentive advanced by CMHC is \$20,000 and the Market Value at the time of repayment is \$331,040, the Shared Equity Amount would be:

$$(\$331,040 - \$400,000) \times 5\% = (\$3,448)$$

As such, the Homeowner repays the Incentive of \$20,000 **TOGETHER WITH** the Shared Equity Amount (\$3,448) for a total of \$16,552 **PLUS** the Additional Costs (if any).

(b) **New construction property where the approved Share is 10%:**

- (1) **Increase:** if the Original Home Value is \$400,000, the Incentive advanced by CMHC is \$40,000 and the Market Value at the time of repayment is \$480,000, the Shared Equity Amount would be:

$$(\$480,000 - \$400,000) \times 10\% = \$8,000$$

As such, the Homeowner repays the Incentive of \$40,000 **TOGETHER WITH** the Shared Equity Amount of \$8,000 for a total of \$48,000 **PLUS** the Additional Costs (if any).

- (2) **Decrease:** if the Original Home Value is \$400,000, the Incentive advanced by CMHC is \$40,000 and the Market Value at the time of repayment is \$331,040, the Shared Equity Amount would be:

$$(\$331,040 - \$400,000) \times 10\% = (\$6,896)$$

As such, the Homeowner repays the Incentive of \$40,000 **TOGETHER WITH** the Shared Equity Amount (\$6,896) for a total of \$33,104 **PLUS** the Additional Costs (if any).

**4. SHARED EQUITY AMOUNT**

- A. As consideration for CMHC advancing the Incentive to the Homeowner, the Homeowner acknowledges and agrees that CMHC is entitled to the Shared Equity Amount.
- B. The Homeowner must pay to CMHC an amount equal to the Incentive **PLUS** the Shared Equity Amount **PLUS** the Additional Costs (if any) based on the Market Value of the Property as determined under Section 4.C if:
- (i) the Homeowner sells the Property; or
  - (ii) the Homeowner wishes to repay the Incentive in full; or
  - (iii) an event occurs under Section 5.A; or
  - (iv) 25 years have passed since the date the Incentive was advanced to the Homeowner.

By way of example, see definition of “Shared Equity Amount”.

- C. CMHC may make a determination of the Market Value of the Property on, or within 2 weeks prior to,
- (a) the date on which the Homeowner wishes to repay the Indebtedness in full; and
  - (b) the date when the Indebtedness becomes repayable under the Shared Equity Mortgage Agreement or this Deed.

- D. Any amounts payable under these Mortgage Terms or the Shared Equity Mortgage Agreement shall not be subject to compounding.
- E. The costs of any appraisal of the Property shall be borne by the Homeowner.

**5. WHEN PRINCIPAL AND OTHER AMOUNTS SECURED ARE REPAYABLE**

- A. The Indebtedness outstanding at any time and all other amounts then owing under or secured by the Shared Equity Mortgage Agreement and this Deed shall be repayable in full on demand in the following circumstances (individually, a “**case of repayment**”), where CMHC determines that:
  - (i) the Homeowner has sold, transferred or otherwise disposed of the Property;
  - (ii) CMHC determines that the Homeowner was not eligible for the advance under the Shared Equity Mortgage Agreement at the time of the original advance;
  - (iii) the Incentive was used contrary to Section 6 hereof;
  - (iv) the Homeowner increases the principal amount or amounts of the First Insured Mortgage without obtaining the prior written consent of CMHC;
  - (v) the Homeowner fails to comply with any of its obligations under the Shared Equity Mortgage Agreement, this Deed or the law;
  - (vi) there is a default under the First Insured Mortgage;
  - (vii) the Homeowner has been fraudulent in his or her representations for eligibility under the Program;
  - (viii) the Homeowner fails to keep the Property in good and reasonable state of repair and condition.
  - (ix) if the Property or any part thereof is subject to an enforcement action (including a prior notice of exercise of a hypothecary right or seizure or of proceeding to partition or any other right of judicial proceedings which could affect the Homeowner’s right of ownership or CMHC’s rights), which was not withdrawn within ten (10) days, even if such proceedings are challenged in good faith by the Homeowner, unless, in such latter case, CMHC is convinced that such proceedings would not have the effect of reducing or jeopardizing the mortgage created herein and that he Homeowner provides an additional security of an amount which, in the Homeowner’s opinion, is sufficient to pay the full amount of such claim, should it be valid;

- (x) should the Homeowner make an assignment to the benefit of its creditors or becomes subject to provisions of the *Bankruptcy and Insolvency Act* (Canada) or any other legislation governing bankruptcy or insolvency or if any other measure is taken or a notice is given in order to make or declare the Homeowner insolvent or bankrupt or in view of a liquidation;
- B. Where the Original Home Value and the Incentive were subject to improvements that are required at the time of purchase and the Homeowner fails to complete such improvements, CMHC will take such failure into account when determining Market Value. In such circumstances, CMHC will determine the Market Value for the purpose of payment of the Indebtedness.
- C. The Indebtedness outstanding at any time and all other amounts then owing under and secured by the Shared Equity Mortgage Agreement or this Deed shall be repayable in full, 120 days after the death of the Homeowner, provided that the obligation to repay shall not apply where the spouse or any one or more of the children of the Homeowner wish to take ownership of the Property and assume the obligations of the Homeowner under the Shared Equity Mortgage Agreement and this Deed.

#### **6. USE OF THE INCENTIVE**

The Incentive must be used by the Homeowner to purchase the Property.

#### **7. USE OF THE PROPERTY**

- A. The Property must be intended to be used as the Homeowner's primary place of residence, and be suitable and available for full-time, year-round occupancy and be located in Canada.
- B. Business uses are not permitted.

#### **8. CMHC'S REMEDIES**

##### **A. Preliminary measures**

In the event of repayment as provided in Section 5.A hereof, the Homeowner loses the benefit of the term and CMHC may, at its discretion, declare that all obligations are owed, without any notice to or demand from the Homeowner.

##### **B. CMHC's Remedies**

In the event of repayment, CMHC may, without notice:

- (i) reimburse or satisfy any existing or future charge, lien, immoveable or legal hypothecs or other encumbrance against the Property;
- (ii) institute a personal action;

- (iii) exercise hypothecary rights provided by law;
- (iv) exercise any other rights available to it under this Deed or the law;
- (v) take any other proceedings provided by law or this Deed to exercise its rights in order to ensure payment and execution of the Indebtedness;

it being understood that all costs, fees and expenses that CMHC incurs in taking one or more of these steps is payable by the Homeowner and shall be added to the Indebtedness.

#### **C. Cumulative rights**

The exercise by CMHC of one of its rights under this Deed or the law shall not prevent it from exercising any of the rights available to it.

### **9. ALLOCATION OF PAYMENTS**

Any amount that the Homeowner pays to CMHC on account of the outstanding balance under the Shared Equity Mortgage Agreement or this Deed shall be applied first to accumulated costs of borrowing, if any, and second, to the Incentive.

### **10. PAYMENT AND PREPAYMENT**

- A. No monthly payment on account of the Incentive or interest shall be required from the Homeowner, except as set out in the Shared Equity Mortgage Agreement or this Deed.
- B. Early prepayment of the Indebtedness is subject to the consent of CMHC, which will not be unreasonably withheld.
- C. In the event of voluntary prepayment of the Indebtedness where no sale of the Property is to occur, CMHC reserves the right to approve the amount being repaid by the Homeowner and to place additional conditions on prepayment, including amendments to the calculation of the Market Value of the Property.

### **11. FIRST INSURED MORTGAGE AND SUBORDINATION**

- A. Where the First Insured Mortgage, or any refinancing thereof, is a collateral mortgage or charge securing an amount which is not insured under the NHA or the PRMHIA:
  - (i) the First Insured Lender shall enter into a Subordination/Cession of Rank Agreement according to the form which shall be provided by CMHC and shall be signed by both the First Insured Lender and CMHC; and
  - (ii) in the event the First Insured Mortgage is enforced either by the First Insured Lender or by CMHC, the Indebtedness shall be paid out in accordance with the Subordination/Cession of Rank

Agreement and, for avoidance of doubt, all non-insured debt under the First Insured Mortgage shall be repaid subsequent to the repayment of the Indebtedness.

- B. CMHC agrees and confirms that this Deed shall always rank behind a mortgage or charge insured pursuant to the NHA or PRMHIA, which replaces the First Insured Mortgage, without increase to the outstanding balance or the amortization period of the First Insured Mortgage (for this Section, the “replacement insured mortgage”), and hereby subordinates and postpones the Indebtedness and this Deed and all rights and remedies derived therefrom under said Deed to such replacement insured mortgage. Notwithstanding the foregoing, where the replacement insured mortgage is a collateral charge that secures an amount which is not subject to the NHA or PRMHIA insurance, this subordination and postponement is only effective in respect of the indebtedness insured pursuant to the NHA or PRMHIA and does not apply in respect of any uninsured indebtedness secured by such replacement insured mortgage.

## **12. APPROVAL OF SALE BY CMHC**

In the event of an intended sale of the Property to a third party who is at arm’s length to the Homeowner within the meaning of the *Income Tax Act*, at least 10 Business Days prior to the proposed closing date, the Homeowner must provide CMHC with all documents and other deliverables required by CMHC in accordance with its guidelines and procedures.

## **13. REPAYMENT**

- A. This Deed shall be discharged upon the full payment of the Indebtedness and the performance by the Homeowner of all of its obligations under the Shared Equity Mortgage Agreement. The discharge of this Deed shall be prepared by CMHC, and, where permitted by law, all legal and other expenses for the preparation, execution and registration of such discharge shall be borne by the Homeowner.

## **14. PORTABILITY**

- A. The Shared Equity Mortgage Agreement and this Deed are not portable and cannot be assigned by the Homeowner to any other person.
- B. The Homeowner may only add one or more persons on title to the Property if:
  - (i) the prior written consent of CMHC is obtained; and
  - (ii) the person or persons enter into an assumption agreement whereby they covenant, promise and agree to and with CMHC to pay all the Indebtedness, and to observe, perform, keep and be bound by every covenants, attornments, terms, conditions and agreements

contained in the Shared Equity Mortgage Agreement and this Deed to the same extent as if such persons had executed the Shared Equity Mortgage Agreement and this Deed as Homeowners.

- C. If, at any time, the person registered on title to the Property changes and such person is not the original Homeowner, such other person agrees to be bound by all obligations of the original Homeowner under the Shared Equity Mortgage Agreement and this Deed.

**15. SPECIAL CONDITIONS APPLICABLE TO DIVIDED CO-OWNERSHIP**

- A. If the Property is part of an immovable held in divided co-ownership, the Homeowner agrees to conform to the laws and regulations governing the divided co-ownership, and the declaration of co-ownership, its amendments and the regulations of the building. If the Property is part of a building held in undivided co-ownership, the Homeowner undertakes to conform to the laws and regulations governing the undivided co-ownership, and the undivided co-ownership agreement, amendments thereto and the regulations of the building, if any. He also agrees to take appropriate measures to remedy, within the best possible delays, any default provided herein which would be the responsibility of all undivided owners.
- B. The Homeowner also agrees to pay when due its contributions to the common expenses, the contingency fund and the self-insurance fund, if any, to obtain CMHC's prior written consent for any act which may reduce the value of its private portion or undivided share and for any other act which would in any way terminate the undivided ownership. It also agrees to provide to CMHC, on demand, a copy of any notice of meeting which it could receive for meetings of co-owners or undivided owners. If the Property is part of a building held in undivided co-ownership, the Homeowner also agrees to underwrite a civil liability insurance and to obtain CMHC's prior written consent for any amendment or withdrawal of the undivided ownership agreement or any other amendments which could increase the risk for CMHC.

**16. GENERAL PROVISIONS**

- A. The Homeowner's current marital status is correctly described in Section II of the Schedule attached hereto.
- B. The Homeowner shall pay punctually when due any amount owed pursuant to any first insurance mortgage or any other loan agreement or any other contractual, statutory or legal or equitable obligation (including any tax) that ranks or could in any event rank in priority or equal to this Deed, including, among others, all real estate taxes and all utilities.

- C. On each anniversary date of this Deed (or when requested by CMHC in writing) the Homeowner shall provide CMHC with written evidence of payments noted above. If the Homeowner fails to make any such payments, or to provide such confirmation to CMHC's reasonable satisfaction, CMHC may pay the amount thereof, which amount shall be added to the Indebtedness secured by this Deed.
- D. The Homeowner must insure and keep insured all buildings, structures, fixtures and improvements on the Property in accordance with the provisions of the First Insured Mortgage or, if there is no First Insured Mortgage, in accordance with customary requirements for properties similar to the Property.
- E. This Deed will not result in any novation and the mortgage created herein is an addition to any other guarantee, mortgage or security which CMHC may hold from time to time. All rights which CMHC may have hereunder are separate and cumulative, and it is understood and agreed that no such rights which CMHC may exercise or not will be deemed to set aside another right which it may claim, nor otherwise limit or lessen any other legal or contractual rights of CMHC.
- F. If several persons are designated as homeowners, each one of them will be a solidary debtor regarding the obligations stated herein or in any renewal or amendment hereof.
- G. CMHC will have the right, at the Homeowner's cost, to execute all deeds and to sign all documents which may be required for this Deed to remain in effect and to be effective against third parties, including the signing and filing of any documents required for the renewal hereof.
- H. Any notice required to be given to the Homeowner or to CMHC may be made in writing by giving it at the respective address for each stated on this Deed, and shall be deemed to have been given on the next Business Day following the date of personal delivery or facsimile transmission, or the fourth next Business Day after the date of mailing. Either the Homeowner or CMHC may change its address for service by giving written notice to the other party in accordance with this Section.
- I. No modification, variation or amendment of the Shared Equity Mortgage Agreement or this Deed, or any explanation of any provision of the Shared Equity Mortgage Agreement or this Deed, shall be effective and binding upon the Homeowner unless in writing and signed by CMHC.
- J. If any part of the Shared Equity Mortgage Agreement or this Deed is found to be illegal or unenforceable, the validity or enforceability of all other parts of the Shared Equity Mortgage Agreement or this Deed will not be affected.

- K. The Deed is governed by the federal laws of Canada and applicable laws of the Province of Quebec.

**17. SPOUSAL CONSENT AND INTERVENTION**

• , • , the Homeowner's spouse, who confirms that his or her and the Homeowner's marital status are correctly described in Section II of the Schedule attached hereto and which, after having examined the document, declares having taken knowledge of this Deed and confirms:

- A. if the Property is used as a "family residence" under Sections 401 and following of the *Civil Code of Québec*, confirms that no declaration of family residence was registered against it;
- B. if the Property is a "family residence" under Sections 401 and following of the *Civil Code of Québec* and a declaration of family residence was registered against it, it confirms that CMHC's hypothecs, mortgages, rights, privileges and remedies hereunder have priority and will be enforceable against the Property as if no such declaration had been registered, and the Intervening Party hereby waives any rights that might result from any such current or future declaration which would be registered against the Property.
- C. acknowledges and agrees that any allocation of a right of use or of ownership against the Property in his or her favour makes him or her solidarily liable for all the Homeowner's obligations under this Deed, without any benefit of division or discussion.

**SCHEDULE**

Section I

Description of the Property

•

Address of the Property: •

Section II

Homeowner's (and spousal) marital status:

•

**IN WITNESS WHEREOF:**

At • , Province of Quebec, as at the date above-mentioned and registered in the files of the undersigned notary under minute number • ( • ).

AFTER DUE READING, the parties have signed in the presence of the undersigned notary.

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• **HOMEOWNER**

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• **INTERVENING PARTY, execution line for each of the parties, if applicable**

**CANADA MORTGAGE AND HOUSING CORPORATION**

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

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Mtre • , Notary